



सरकारी गज़ट, उत्तर प्रदेश

उत्तर प्रदेश सरकार द्वारा प्रकाशित

खण्ड 75] प्रयागराज, शनिवार, 1 मई, 2021 ई० (बैशाख 11, 1943 शक संवत्) [संख्या 18

विषय-सूची

हर भाग के पन्ने अलग-अलग किये गये हैं, जिससे इनके अलग-अलग खण्ड बन सके।

विषय	पृष्ठ संख्या	वार्षिक चन्दा	विषय	पृष्ठ संख्या	वार्षिक चन्दा
सम्पूर्ण गजट का मूल्य		रु०			रु०
भाग 1-विज्ञप्ति-अवकाश, नियुक्ति, स्थान-नियुक्ति, स्थानान्तरण, अधिकार और दूसरे वैयक्तिक नोटिस	421-425	3075	भाग 4-निदेशक, शिक्षा विभाग, उत्तर प्रदेश	..	975
भाग 1-क-नियम, कार्य-विधियां, आज्ञायें, विज्ञप्तियां इत्यादि, जिनको उत्तर प्रदेश के राज्यपाल महोदय, विभिन्न विभागों के अध्यक्ष तथा राजस्व परिषद् ने जारी किया	491-494	1500	भाग 5-एकाउन्टेन्ट जनरल, उत्तर प्रदेश		975
भाग 1-ख (1) औद्योगिक न्यायाधिकरणों के अभिनिर्णय			भाग 6-(क) बिल, जो भारतीय संसद में प्रस्तुत किये गये या प्रस्तुत किये जाने से पहले प्रकाशित किये गये		975
भाग 1-ख (2)-श्रम न्यायालयों के अभिनिर्णय			(ख) सिलेक्ट कमेटियों की रिपोर्ट		
भाग 2-आज्ञायें, विज्ञप्तियां, नियम और नियम विधान, जिनको केन्द्रीय सरकार और अन्य राज्यों की सरकारों ने जारी किया, हाई कोर्ट की विज्ञप्तियां, भारत सरकार के गजट और दूसरे राज्यों के गजटों का उद्धरण	..	975	भाग 6-क-भारतीय संसद के ऐक्ट		
भाग 3-स्वायत्त शासन विभाग का क्रोड़पत्र, खण्ड क-नगरपालिका परिषद्, खण्ड ख-नगर पंचायत, खण्ड ग-निर्वाचन (स्थानीय निकाय) तथा खण्ड घ-जिला पंचायत	..	975	भाग 7-(क) बिल, जो राज्य की धारा सभाओं में प्रस्तुत किये जाने के पहले प्रकाशित किये गये		
			(ख) सिलेक्ट कमेटियों की रिपोर्ट		
			भाग 7-क-उत्तर प्रदेशीय धारा सभाओं के ऐक्ट		975
			भाग 7-ख-इलेक्शन कमीशन ऑफ इंडिया की अनुविहित तथा अन्य निर्वाचन सम्बन्धी विज्ञप्तियां	17-56	
			भाग 8-सरकारी कागज-पत्र, दबाई हुई रुई की गाठों का विवरण-पत्र, जन्म-मरण के आँकड़े, रोगग्रस्त होने वालों और मरने वालों के आँकड़े, फसल और ऋतु सम्बन्धी रिपोर्ट, बाजार भाव, सूचना, विज्ञापन इत्यादि	469-473	975
			स्टोर्स-पचेज विभाग का क्रोड़ पत्र	..	1425

भाग 1

विज्ञप्ति-अवकाश, नियुक्ति, स्थान-नियुक्ति, स्थानान्तरण, अधिकार और दूसरे वैयक्तिक नोटिस।

गृह विभाग

[पुलिस सेवायें]

अनुभाग-1

निधन

20 अप्रैल, 2021 ई0

सं0 6-17099/23/2020—अपर पुलिस महानिदेशक, प्रशासन, उ0प्र0 लखनऊ के पत्र संख्या डीजी-दो-अ-49(01)2021, दिनांक 06 अप्रैल, 2021 द्वारा उपलब्ध करायी गयी सूचना के क्रम में यह सूचित किया जाता है कि उ0प्र0 प्रान्तीय पुलिस सेवा संवर्ग में अपर पुलिस अधीक्षक, एस0टी0एफ0 मुख्यालय, लखनऊ में कार्यरत श्री राजेश कुमार सिंह पुत्र श्री गिरजा शंकर सिंह, निवासी ग्राम व पोस्ट-अर्जुनपुर, थाना-गौरीगंज, जनपद अमेठी, पीपीएस बैच 2000 (जन्म-तिथि 02 फरवरी, 1974) का दिनांक 28 मार्च, 2021 को जनपद लखनऊ में असामयिक निधन हो गया।

आज्ञा से,
महेन्द्र प्रसाद भारती,
संयुक्त सचिव।

राज्य कर विभाग

अनुभाग-1

शुद्धि-पत्र

06 अप्रैल, 2021 ई0

सं0 राज्य कर-1-428/11-2021-34/2020—शासन के विज्ञप्ति/नियुक्ति आदेश संख्या राज्य कर-331/11-2021-34/2020, दिनांक 25 मार्च, 2021 का कृपया संदर्भ ग्रहण करें, जिसके माध्यम से लोक सेवा आयोग, उ0प्र0 की सम्मिलित राज्य/प्रवर अधीनस्थ सेवा (सामान्य चयन/विशेष चयन) परीक्षा, 2018 के परिणाम के आधार पर क्रमांक-4 पर संस्तुत अभ्यर्थिनी सुश्री प्रिया गर्ग पुत्री श्री प्रमोद कुमार गर्ग (लोक सेवा आयोग की मेरिट सूची क्रमांक-33) का स्थायी पता 19, Sarla Bagh, Dayal Bagh, Agra, Uttar Pradesh 282005 के स्थान पर A-401, Rohtas Hamptons Court Apartment, Lucknow, Uttar Pradesh 226012 टंकित हो गया है।

अतः उक्त विज्ञप्ति/नियुक्ति आदेश संख्या राज्य कर-331/11-2021-34/2020, दिनांक 25 मार्च, 2021 में सुश्री प्रिया गर्ग पुत्री श्री प्रमोद कुमार गर्ग के स्थायी पते को A-401, Rohtas Hamptons Court Apartment, Lucknow, Uttar Pradesh 226012 के स्थान पर 19, Sarla Bagh, Dayal Bagh, Agra, Uttar Pradesh 282005 पढ़ा जाय।

2—विज्ञप्ति/नियुक्ति आदेश संख्या राज्य कर-331/11-2021-34/2020, दिनांक 25 मार्च, 2021 इस सीमा तक संशोधित समझा जाय।

आज्ञा से,
नीरजा कुरील,
संयुक्त सचिव।

कार्यालय-ज्ञाप

28 फरवरी, 2020 ई0

सं0 राज्य कर-1-226/11-2020-15/18—कमिश्नर, वाणिज्य कर, उ0प्र0 लखनऊ के पत्र संख्या स्था-1-पी0एफ0-श्री शलभ शर्मा, डि0कमि0/19-20/990/वाणिज्य कर, दिनांक 17 फरवरी, 2020 के माध्यम से प्राप्त

श्री शलभ शर्मा, डिप्टी कमिश्नर खण्ड-5, वाणिज्य कर, झाँसी के अनुरोध-पत्र पर शासन द्वारा सम्यक् विचारोपरान्त श्री शलभ शर्मा, डिप्टी कमिश्नर, वाणिज्य कर विभाग का गृह जनपद एतद्द्वारा परिवर्तित किया जाता है—

क्र०सं०	नाम	पदनाम	गृह जनपद	परिवर्तित गृह जनपद
1	श्री शलभ शर्मा	डिप्टी कमिश्नर खण्ड-5, वाणिज्य कर, झाँसी	सहारनपुर	देहरादून, उत्तराखण्ड

2—उपरोक्त गृह जनपद परिवर्तन इस शर्त के साथ है कि यह गृह जनपद परिवर्तन उक्त अधिकारी के सेवाकाल में अंतिम होगा।

आज्ञा से,
नरेन्द्र कुमार,
संयुक्त सचिव।

प्राविधिक शिक्षा विभाग

अनुभाग-2

नियुक्ति

06 अप्रैल, 2021 ई0

सं० 613/सोलह-2-2021—प्राविधिक शिक्षा विभाग (डिप्लोमा सेक्टर), उ०प्र० के अन्तर्गत राजकीय पालीटेक्निक, उ०प्र० में प्रवक्ता इन्फार्मेशन टेक्नालॉजी के पदों पर सीधी भर्ती द्वारा नियमित चयन के फलस्वरूप लोक सेवा आयोग, उ०प्र० की संस्तुति के आधार पर श्री राज्यपाल, निम्नलिखित अभ्यर्थियों को उनके कार्यभार ग्रहण करने की तिथि से प्रवक्ता इन्फार्मेशन टेक्नालॉजी के पद पर वेतनमान रु० 15,600-39,100, ग्रेड वेतन रु० 5,400 में अस्थायी रूप से नियुक्त करते हुये उनके नाम के सम्मुख अंकित तालिका के स्तम्भ-5 में अंकित संस्था में तैनात किये जाने की सहर्ष स्वीकृति प्रदान करते हैं—

क्र० सं०	लोक सेवा आयोग का क्रमांक	अभ्यर्थी का नाम	गृह जनपद	तैनाती की संस्था
1	2	3	4	5
		सर्वश्री/श्रीमती/सुश्री—		
1	1	शेखर सिंह पुत्र श्री रमेश कुमार सिंह	कानपुर नगर	महामाया पालीटेक्निक आफ इन्फार्मेशन टेक्नालॉजी, हाथरस।
2	2	अनामिका पुत्री श्री महेश कुमार	मेरठ	राजकीय पालीटेक्निक, गाजियाबाद।
3	5	नीरज सिंह कुशवाहा पुत्र श्री जय राम	लखनऊ	छत्रपति शाहू जी महाराज राजकीय पालीटेक्निक, अम्बेडकर नगर।
4	7	नम्रता सिंह पुत्री श्री विनोद कुमार सिंह	प्रयागराज	राजकीय पालीटेक्निक, औराई (संतरविदास नगर) भदोही।
5	9	जया सिंह पुत्री श्री राम पाल	प्रयागराज	महामाया पालीटेक्निक आफ इन्फार्मेशन टेक्नालॉजी, अमरोहा।
6	10	इन्दू मौर्या पुत्री श्री सुन्दर लाल मौर्या	कानपुर नगर	महामाया पालीटेक्निक आफ इन्फार्मेशन टेक्नालॉजी, चन्दौली।

1	2	3	4	5
		सर्वश्री/श्रीमती/सुश्री—		
7	11	पूनम यादव पुत्री श्री जगराम यादव	बस्ती	महामाया पालीटेक्निक टेक्नालॉजी, हाथरस।
8	13	अरुण पर्वार पुत्र श्री यशपाल सिंह पर्वार	बागपत	महामाया पालीटेक्निक टेक्नालॉजी, चन्दौली।

2—सम्बन्धित अभ्यर्थियों को कार्यभार ग्रहण करने की तिथि से उक्त वेतनमान के अतिरिक्त समय-समय पर जारी शासनादेशों के अन्तर्गत अनुमन्य महंगाई भत्ता तथा अन्य भत्ते भी देय होंगे।

3—सम्बन्धित अभ्यर्थियों को यह भी निर्देशित किया जाता है कि वे अपना कार्यभार इस आदेश के निर्गत होने के दिनांक से एक माह के अन्दर अवश्य ग्रहण कर लें अन्यथा उनकी नियुक्ति निरस्त कर दी जायेगी। कार्यभार ग्रहण करने हेतु सम्बन्धित अभ्यर्थियों को किसी प्रकार का यात्रा-भत्ता देय नहीं होगा।

4—सम्बन्धित अभ्यर्थियों की पारस्परिक ज्येष्ठता सुसंगत नियमावली के प्राविधानों के अनुरूप बाद में निर्धारित की जायेगी।

5—उक्त पद पर कार्यभार ग्रहण करने की तिथि से सम्बन्धित अभ्यर्थी को 02 वर्ष की विहित परीक्षा पर रहेंगे।

आज्ञा से,
सुनील कुमार चौधरी,
विशेष सचिव।

लोक निर्माण विभाग

अनुभाग-3

कार्यालय-ज्ञाप

31 मार्च, 2021 ई0

सं0 31/2021/659/23-3-2021-47 ईएस/2006-टीसी-तात्कालिक प्रभाव से श्री सुरेश प्रताप सिंह, प्रमुख अभियन्ता, लोक निर्माण विभाग को प्रमुख अभियन्ता (परि0 एवं नियो0), लोक निर्माण विभाग के पद पर तैनात करते हुये पूर्णतया काम-चलाऊ व्यवस्था के अन्तर्गत, अग्रिम आदेशों तक प्रमुख अभियन्ता (विकास) एवं विभागाध्यक्ष, लो0नि0वि0, लखनऊ का अतिरिक्त कार्यभार एतद्वारा प्रदान किया जाता है।

2—उक्त अतिरिक्त कार्यभार के लिये श्री सुरेश प्रताप सिंह, प्रमुख अभियन्ता, लोक निर्माण विभाग को कोई अतिरिक्त वेतन/भत्ते देय नहीं होंगे।

आज्ञा से,
नितिन रमेश गोकर्ण,
प्रमुख सचिव।

कार्यालय-ज्ञाप

06 अप्रैल, 2021 ई0

सं0 32/2021/687/23-3-2021-29 ई0एस0/2015—कार्यालय ज्ञाप संख्या 86/2018/248/23-3-18-29 ईएस/15, दिनांक 17 मई, 2018 द्वारा श्री उमा शंकर, सेवानिवृत्त अधिशासी अभियन्ता, लोक निर्माण विभाग को उनसे कनिष्ठ श्री अशोक कुमार की अधीक्षण अभियन्ता (सिविल) के पद पर पदोन्नति की तिथि 01 जून, 2016 से वेतन बैंड-4 वेतनमान रु0 37,400-67,000 ग्रेड वेतन रु0 8,700 में नोशनल पदोन्नति रिट याचिका संख्या 8086(एमबी)/2015 मे0 हिन्द कन्स्ट्रक्शन इंटरप्राइजेज व अन्य बनाम उ0प्र0 राज्य व अन्य में पारित होने वाले अंतिम निर्णय के अधीन प्रदान की गई थी। उक्त आदेश प्रभावी होने की तिथि के पूर्व ही श्री उमा शंकर दिनांक 30 अप्रैल, 2016 को सेवानिवृत्त हो गये थे। श्री उमा शंकर से कनिष्ठ श्री अशोक कुमार को दिनांक 29 फरवरी, 2016 से

स्थानापन्न पदोन्नति प्रदान किये जाने के दृष्टिगत उक्त तिथि से नोशनल पदोन्नति दिये जाने हेतु मा0 राज्य लोक सेवा अधिकरण में निर्देश याचिका संख्या 2004/2018 योजित की गई। उक्त निर्देश याचिका में मा0 राज्य लोक सेवा अधिकरण द्वारा दिनांक 15 अक्टूबर, 2020 को आदेश पारित किये गये, जिनका कार्यकारी अंश निम्नवत् है :

"Four weeks and no more time is provided to the respondents to rectify the mistake in the order of promotion.

List on 04-12-2020."

2—मा0 राज्य लोक सेवा अधिकरण द्वारा पारित आदेश के क्रम में कार्मिक विभाग का परामर्श प्राप्त किया गया। कार्मिक विभाग के कार्यालय ज्ञाप दिनांक 28 मई, 1997 के प्रस्तर-1(7) में निम्न व्यवस्था प्राविधानित है—

“जब सम्बन्धित कार्मिक निलम्बित न हो और उसके विरुद्ध चल रही अनुशासनिक विभागीय कार्यवाही, प्रशासनाधिकरण या यथास्थिति अभियोजन की समस्त कार्यवाहियों के अन्तिम परिणाम सामने आ जायं अर्थात् उसके विरुद्ध कोई ऐसा मामला न हो जो ऊपर खण्ड (2) के उपखण्ड (क), (ख), (ग) की श्रेणी में आता है तो निम्नलिखित प्रक्रिया अपनाते हुये मुहर बन्द लिफाफे का निस्तारण किया जायेगा :

(क) आरोपित कार्मिक, जिसके विषय में चयन समिति की संस्तुति मुहर बन्द लिफाफे में रखी गयी है, को यदि पूर्ण रूप से दोष मुक्त पाया जाता है तो नियुक्ति प्राधिकारी (या यथास्थिति चयन कराने वाले विभाग के सचिव या प्रमुख सचिव जिनकी अभिरक्षा में चयन समिति का कार्यवृत्त रखा जाता है) द्वारा लिफाफे को खोला जायेगा और तदोपरान्त इसमें रखी संस्तुति के क्रियान्वयन की कार्यवाही की जायेगी। ऐसे मामले में यदि लिफाफे में रखी संस्तुति के अनुसार उसे प्रोन्नति हेतु संस्तुति किया गया हो तो उसे संदर्भित चयन के आधार पर प्रोन्नत किये गये उसके कनिष्ठ की प्रोन्नति की तिथि से नोशनल प्रोन्नत माना जायेगा और तदनुसार आदेश निर्गत किये जायेंगे।

3—कार्यालय ज्ञाप दिनांक 28 मई, 1997 के प्राविधानानुसार कार्यालय ज्ञाप दिनांक 17 मई, 2018 द्वारा श्री उमा शंकर को उनसे कनिष्ठ श्री अशोक कुमार की अधीक्षण अभियन्ता (सिविल) के पद पर पदोन्नति की तिथि 01 जून, 2016 से नोशनल पदोन्नति प्रदान की गई थी, परन्तु उक्त तिथि के पूर्व ही श्री उमा शंकर अपनी अधिवर्षता आयु पूर्ण कर दिनांक 30 अप्रैल, 2016 को सेवानिवृत्त हो गये थे। श्री उमा शंकर के सेवा काल में इनसे कनिष्ठ किसी अधिकारी की अधीक्षण अभियन्ता (सिविल) के पद पर नियमित प्रोन्नति नहीं हुई थी। अतः उपरोक्त वर्णित स्थिति में कार्यालय ज्ञाप संख्या 86/2018/248/23-3-18-29 ईएस/15, दिनांक 17 मई, 2018 को एतद्वारा निरस्त किया जाता है।

कार्यालय-ज्ञाप

01 अप्रैल, 2021 ई0

सं0 669/23-3-2021-16 ईएस/2020-टीसी—तात्कालिक प्रभाव से श्री संजीव भारद्वाज, नवप्रोन्नत मुख्य अभियन्ता स्तर-2 (सिविल), लोक निर्माण विभाग को अपने कार्यों के साथ-साथ पूर्णतया काम-चलाऊ व्यवस्था के अन्तर्गत, अग्रिम आदेशों तक मुख्य अभियन्ता, वाराणसी क्षेत्र, लोक निर्माण विभाग, वाराणसी का अस्थायी प्रभार एतद्वारा प्रदान किया जाता है।

सं0 670/23-3-2021-16 ईएस/2020-टीसी—तात्कालिक प्रभाव से श्री अनिल मिश्रा, नवप्रोन्नत मुख्य अभियन्ता स्तर-2 (सिविल), लोक निर्माण विभाग को अपने कार्यों के साथ-साथ पूर्णतया काम-चलाऊ व्यवस्था के अन्तर्गत, अग्रिम आदेशों तक मुख्य अभियन्ता, अयोध्या क्षेत्र, लोक निर्माण विभाग, अयोध्या का अस्थायी प्रभार एतद्वारा प्रदान किया जाता है।

आज्ञा से,
जे0 बी0 सिंह,
सचिव।

पी0एस0यू0पी0—5 हिन्दी गजट—भाग 1—2021 ई0।

मुद्रक एवं प्रकाशक—निदेशक, मुद्रण एवं लेखन-सामग्री, उ0प्र0, प्रयागराज।



सरकारी गज़ट, उत्तर प्रदेश

उत्तर प्रदेश सरकार द्वारा प्रकाशित

प्रयागराज, शनिवार, १ मई, २०२१ ई० (बैशाख ११, १९४३ शक संवत्)

भाग १-क

नियम, कार्य विधियां, आज्ञायें, विज्ञप्तियां इत्यादि, जिनको उत्तर प्रदेश के राज्यपाल महोदय, विभिन्न विभागों के अध्यक्ष तथा राजस्व परिषद् ने जारी किया।

HIGH COURT OF JUDICATURE AT ALLAHABAD NOTIFICATION

March 24, 2021

No. 230/Admin.(Services)-2021—On reversion to the regular line Smt. Shivani Jayaswal, Registrar (Judicial) (Establishment), High Court of Judicature at Allahabad, Lucknow Bench, Lucknow to be Additional District & Sessions Judge/Special Judge, Lucknow *vice* Sri Mohd. Ghazali.

She is also appointed under section 12-A of U.P. Essential Commodities (Special Provisions) Act, 1981, as Special Judge at Lucknow against the special court created for trying cases under the said Act.

No. 231/Admin.(Services)-2021—Sri Mohd. Ghazali, Special Judge/Additional District & Sessions Judge, Lucknow to be Additional District & Sessions Judge, Lucknow.

No. 232/Admin.(Services)-2021—Sri Aditya Chaturvedi, Additional District & Sessions Judge, Lucknow to be Additional District & Sessions Judge/ Special Judge, Anti-Corruption (VBUPSEB), Lucknow *vice* Sri Mayank Tripathi.

No. 233/Admin.(Services)-2021—Sri Mayank Tripathi, Special Judge/Additional District & Sessions Judge, Lucknow to be Additional District & Sessions Judge, Lucknow.

By order of the Court,
AJAI KUMAR SRIVASTAVA-I,
Registrar General.

March 25, 2021

No. 234/Admin.(Services)-2021—Sri Ashish Garg, Special Officer (Vigilance), High Court of Judicature at Allahabad to be Registrar General, High Court of Judicature at Allahabad.

By order of Hon'ble the Chief Justice,
RAN VIJAY PRATAP SINGH,
Joint Registrar (J) (Services).

No. 235/Admin.(Services)-2021—Sri Avnish Saxena, Presiding Officer, Land Acquisition, Rehabilitation and Resettlement Authority, Allahabad to be Special Officer (Vigilance), High Court of Judicature at Allahabad.

March 27, 2021

No. 236/Admin.(Services)-2021—Sri Jitendra Kumar Sinha, District & Sessions Judge, Mau to be District & Sessions Judge, Ghaziabad.

No. 237/Admin.(Services)-2021—Sri Shanker Lal, Principal Judge, Family Court, Amroha to be District & Sessions Judge, Mau.

No. 238/Admin.(Services)-2021—Sri Mayank Kumar Jain, District & Sessions Judge, Meerut to be District & Sessions Judge, Gonda.

No. 239/Admin.(Services)-2021—Sri Sanjay Shanker Pandey, District & Sessions Judge, Gonda to be District & Sessions Judge, Pratapgarh.

No. 240/Admin.(Services)-2021—Sri Anil Kumar Jha, District & Sessions Judge, Pratapgarh to be District & Sessions Judge, Ramabai Nagar (Kanpur Dehat).

No. 241/Admin.(Services)-2021—Sri Dinesh Kumar Shrama-III, District & Sessions Judge, Lucknow to be District & Sessions Judge, Meerut.

No. 242/Admin.(Services)-2021—Sri Sarvesh Kumar, District & Sessions Judge, Saharanpur to be District & Sessions Judge, Lucknow.

No. 243/Admin.(Services)-2021—Sri Ashwini Kumar Tripathi, District & Sessions Judge, Sambhal at Chandausi to be District & Sessions Judge, Saharanpur.

No. 244/Admin.(Services)-2021—Sri Satish Kumar-II, Presiding Officer, Commercial Court, Moradabad to be District & Sessions Judge, Sambhal at Chandausi.

No. 245/Admin.(Services)-2021—Sri Jitendra Kumar Pandey, Presiding Officer, Motor Accident Claim Tribunal, Ramabai Nagar to be Presiding Officer, Commercial Court, Moradabad.

No. 246/Admin.(Services)-2021—Sri Kaushlendra Yadav, Presiding Officer, Motor Accident Claim Tribunal, Bareilly to be District & Sessions Judge, Shahjahanpur *w.e.f.* 01-04-2021.

No. 247/Admin.(Services)-2021—Sri Alok Kumar Trivedi, Presiding Officer, Motor Accident Claim

Tribunal, Etawah to be District & Sessions Judge, Ballia.

No. 248/Admin.(Services)-2021—Sri Vijendra Singh, Presiding Officer, Motor Accident Claim Tribunal, Bijnor to be District & Sessions Judge, Kushinagar at Padrauna.

No. 249/Admin.(Services)-2021—Sri Lallu Singh, Principal Judge, Family Court, Moradabad to be Presiding Officer, Commercial Court, Aligarh.

March 29, 2021

No. 250/Admin.(Services)-2021—In partial modification in first para of point no. 7 of Court's endorsement no. 162/Admin. (Services)/2021, dated March 27, 2021 that "The Officers mentioned above shall hand over charge of their present posts and shall proceed to take over charge of their new postings immediately" be read as "The Officers mentioned above shall hand over charge of their present posts and shall proceed to take over charge of their new postings *w.e.f.* 01-04-2021".

No. 251/Admin.(Services)-2021—In exercise of the powers conferred under Clause 12-D (Note) of Financial Hand Book, Volume-V (Part-I), Chapter-II, High Court of Judicature at Allahabad hereby delegates Financial Powers to Sri Chandra Bhanu Singh, Additional District & Sessions Judge, Ballia till new the District & Sessions Judge assumes charge of the office.

No. 252/Admin.(Services)-2021—In exercise of the powers conferred under Clause 12-D (Note) of Financial Hand Book, Volume-V (Part-I), Chapter-II, High Court of Judicature at Allahabad hereby delegates Financial Powers to Sri Ram Milan Singh, Additional District & Sessions Judge, Ramabai Nagar till new the District & Sessions Judge assumes charge of the office.

By order of the Court,
ASHISH GARG,
Registrar General.

HIGH COURT OF JUDICATURE AT ALLAHABAD ESTABLISHMENT SECTION NOTIFICATION

April 05, 2021

No. 01—In exercise of the powers conferred by clause (2) of Article 229 of the Constitution of India, Hon'ble the Chief Justice has been pleased to make following amendments in the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 :

THE ALLAHABAD HIGH COURT OFFICERS AND STAFF (CONDITIONS OF SERVICE AND CONDUCT) (AMENDMENT) RULES, 2021

1. Short title and commencement.—(i) These rules shall be called "The Allahabad High Court Officers and Staff (Conditions of Service and Conduct) (Amendment) Rules, 2021".

(ii) These Rules shall come into force with immediate effect.

2. The Amendments which are to be made in Rule 20(d) of the Allahabad High Court Officers and Staff (Conditions of Service and Conduct) Rules, 1976 shall be as under :

<i>Existing Rule</i>	<i>Amended Rule</i>
<p>Rule 20.</p> <p>(d) Joint Registrar :- (i) By deputation of an officer of U.P. Higher Judicial Service.</p> <p>(ii) By promotion from amongst the Deputy Registrars, having completed training as prescribed and possessing a minimum two years' combined experience as Assistant Registrar and Deputy Registrar out of which at least one year should be on the post of Deputy Registrar, on the basis of seniority subject to suitability.</p> <p>(a) To assess eligibility for training of Deputy Registrars possessing requisite experience, marks obtained in ACR shall be considered, for which minimum marks required shall be 65% in ACR.</p> <p>(b) Thereafter a list of Deputy Registrars, one and half time of vacancies on the post of Joint Registrar, shall be prepared. These Deputy Registrars shall undergo four and half months training, particularly with regard to application of Law in the working of the High Court, conducted by J.T.R.I., Lucknow and 90% attendance shall be compulsory during training programme. The Director, J.T.R.I. shall certify whether such Deputy Registrars have successfully completed the training.</p> <p>(c) The term "successful training" shall mean qualifying a written test followed by interview pertaining to the legal knowledge extended during course of the training. The written test shall be conducted by the JTRI and that would consist of multiple choice questions to be answered on OMR sheet. The interview shall be conducted by the Chief Justice or the person or Committee nominated by him.</p> <p>(d) To assess the suitability marks obtained in ACR & interview shall be considered. Minimum marks required for suitability for promotion from the post of Deputy Registrar to that of Joint Registrar shall be 65% in ACR and 45% in interview.</p>	<p>Rule 20.</p> <p>(d) Joint Registrar :- (i) By deputation of an officer of U.P. Higher Judicial Service.</p> <p>(ii) By promotion from amongst the Deputy Registrars on the basis of seniority subject to suitability.</p> <p>(a) Thereafter, promoted Joint Registrars shall undergo four and half months training, particularly with regard to application of Law in the working of the High Court, conducted by J.T.R.I., Lucknow and 90% attendance shall be compulsory during training programme. The Director, J.T.R.I. shall certify whether such Joint Registrars have successfully completed the training.</p> <p>(b) The term "successful training" shall mean 90% attendance in training programme conducted by JTRI.</p> <p>(c) To assess the suitability marks obtained in ACR & interview shall be considered. Minimum marks required for suitability for promotion from the post of Deputy Registrar to that of Joint Registrar shall be 65% in ACR and 45% in interview.</p>

By order of
Hon'ble the Chief Justice,
(*Sd.*) ILLEGIBLE,
Registrar General.

ESTABLISHMENT SECTION*April 05, 2021*

No. 02—Sri Manvendra Pratap Singh, Assistant Registrar is hereby designated as the Chief Protocol Officer (General, Security & Staff Car), Lucknow Bench except Medical Protocol. He shall not be entitled to any special financial or career related benefits due to change in the above designation nomenclature.

No. 03—Sri Ashutosh Kumar Singh, Section Officer is hereby designated as the Protocol Officer (General & Security), Lucknow Bench. He shall not be entitled to any special financial or career related benefits due to change in the above designation nomenclature.

No. 04—Sri Piyush Kant, Section Officer posted at U.P. Sadan, Delhi is hereby designated as Protocol Officer at U.P. Sadan, Delhi, S/Sri Prem Kumar Subodh, RO, Naresh Kumar, RO, Kumar Vaishnay, RO, Jag Mohan, RO, Rahul Kumar Gautam, RO and Pankaj Kishor Mishra, RO are hereby designated as Assistant Protocol Officers at U.P. Sadan, New Delhi. They shall not be entitled to any special financial or career related benefits due to change in the above designation nomenclature.

By order of
Hon'ble the Chief Justice,
(Sd.) ILLEGIBLE,
Registrar General.



सरकारी गज़ट, उत्तर प्रदेश

उत्तर प्रदेश सरकार द्वारा प्रकाशित

प्रयागराज, शनिवार, १ मई, २०२१ ई० (बैशाख ११, १९४३ शक संवत्)

भाग ७-ख

इलेक्शन कमीशन आफ इण्डिया की अनुविहित तथा अन्य निर्वाचन सम्बन्धी विज्ञप्तियां।

भारत निर्वाचन आयोग

०१ अप्रैल, २०२१ ई०
नई दिल्ली, तारीख : ११ चैत्र, १९४३ (शक)

अधिसूचना

सं० ८२/उ०प्र०-वि०स०/१/२०१८(इला०)—लोक प्रतिनिधित्व अधिनियम, १९५१ (१९५१ का ४३) की धारा १०६ के अनुसरण में भारत निर्वाचन आयोग, २०१८ की निर्वाचन अर्जी संख्या १ में इलाहाबाद उच्च न्यायालय के तारीख १० मार्च, २०२१ के निर्णय को एतद्वारा प्रकाशित करता है।

आदेश से,
दिलीप के० वर्मा,
सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

०१th April, 2021
New Delhi, dated the

Chaitra 11, 1943 (Saka).

No. 82/UP-LA./1/2018(Alld.)—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgment, dated 10th March, 2021 of the High Court of Judicature at Allahabad in Election Petition No. 1 of 2018.

By order,
DILIP K. VERMA,
Secretary,
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**CIVIL SIDE****Original Jurisdiction***Dated Allahabad, 10-03-2021**PRESENT*

THE HON'BLE DINESH KUMAR SINGH-I.

*..JUDGE.***Election Petition no. 01 of 2018**

ORDER ON THE PETITION OF SEEMA SACHAN

*.. Petitioner.***IN RE:**

Seema Sachan wife of Sri Rakesh Sachan
 Resident of Village Murlipur M. Patari,
 Post Office Rar, District Kanpur Nagar.

*.. Election Petitioner.***VERSUS**

1. Ajeet Singh Pal Son of Late Mathura Prasad Pal,
 Resident of House No. 98, Taharpur Mahdoo,
 Post Office Barhapur, Tehsil Akbarpur, District Kanpur Dehat.

.. Returned Candidate/Respondent.

2. Prabhakar Pandey Son of Sri Santosh Kumar Pandey,
 Resident of House No. 145, Om Nagar Auraiya.
3. Dr. Nirmal Patel Son of Sri Babu Ram,
 Resident of Village & Post Mirzapur Kala, Sandalpur,
 District Kanpur Dehat.
4. Prem Narain Sachan Son of Mahaveer Prasad,
 Resident of Village & Post Arhariya Mau,
 Bhoganipur, District Kanpur Dehat.
5. Ravindra Kumar Katiyar Son of Mauji Lal,
 Resident of Village Khas Bara, Post Rajpur Sikandra,
 District Kanpur Dehat.
6. Vijay Singh Yadav Son of Ram Prakash, Resident of Village Anapurna Nagar
 Tathia Road Tirua, P.O. Tirua Khas, District Kannauj.
7. Pramod Kumar Son of Hardayal Singh, Resident of Village Anjanpur Indauti,
 Post Joth, Rasulabad, District Kanpur Dehat.
8. Bijendra @ Bauwa Trivedi Son of Hriday Narain, Resident of Village Banipara
 Mahraj Derapur, District Kanpur Dehat.
9. Raj Kumar Katiyar Son of Ram Shankar, Resident of Village Dev Brahmapur,
 Post Gauri Karan, Bhoganipur, District Kanpur Dehat.
10. Santosh Shukla Son of Sharda Prasad Village and Post Baragaon,
 District Kanpur Dehat.

... Respondents.

Counsel for the Petitioners : Sri Vijay Bahadur Singh, Sri Jitendra Kumar, Sri Prashant Rai, Sri Seema Sachan (*In Person*).

Counsel for the Respondents : Sri Prabhakar Tripathi, Sri Bharat Singh Pal, Sri Neeraj Tripathi, Sri Shyam Sundar, Sri Bharat Singh Pal.

By The Court**A.F.R.**

Judgement Reserved on 22-02-2021

Judgement Delivered on 10-03-2021

Court No.-76**Case-Election Petition no. 1 of 2018.***Petitioner*-Seema Sachan.*Respondent*-Ajeet Singh Pal and 9 Others.*Counsel for Petitioner*-Jitendra Kumar, Jitendra Kumar, Prashant Rai, Seema Sachan (In Person).*Counsel for Respondent*-Prabhakar Tripathi, Bharat Singh Pal, Neeraj Tripathi, Shyam Sundar, Bharat Singh Pal.**Hon'ble Dinesh Kumar Singh-I J.**

1. Heard Sri Vijay Bahadur Singh, learned Sr. Advocate assisted by Sri Jitendra Kumar, learned counsel for the petitioner and Sri Bharat Singh Pal, learned counsel for the Respondent No. 1.
2. This Election Petition has been filed by Ms. Seema Sachan seeking election of Ajeet Pal Singh, respondent no. 1/returned candidate as member of legislative assembly from 207, Sinkandra Legislative Assembly Constituency, Kanpur Dehat, U.P. to be declared as void and also get herself declared successful in his place. Uttar Pradesh Vidhan Sabha, By-Election, 2017 of 207, Sinkandra Legislative Constituency, Kanpur Dehat was notified on 27.11.2017 and the schedule of election was as follows: (1) Date of notification of election 27.11.2017; (2) last date for filing of nomination paper 4.12.2017; (3) date of scrutiny of nomination paper 5.12.2017; (4) date of withdrawal of candidature 7.12.2017; (5) date of poll 21.12.2017; (6) date of counting 24.12.2017; (7) date before which election shall be completed 26.12.2017; and (8) hours of poll 08:00 a.m. to 05:00 p.m.
3. The Election Commission of India, in exercise of its power conferred under Section 61-A of the Representation of People's Act 1951 (in short to be referred hereafter as 'The Act') read with Rule 49-A of the Conduct of Election Rules, 1961 (in short to be referred hereafter as 'Rules of 1961') issued a direction on 14.12.2017 that the current by-Election of State Legislative Assembly including 207, Sikandara Legislative Assembly, Kanpur Dehat, U.P., notified on 27.11.2017, shall be held as per the schedule mentioned above in para 1 and votes would be recorded by means of Electronic Voting Machine (E.V.M.) and Voters Verifiable Paper Audit Trail (V.V.P.A.T.) printers under Rules of 1961 and Supplementary instructions issued from time to time by the Election Commission of India. The said direction dated 14.12.2017 was published in Official Gazette of the States including the State of Uttar Pradesh.
4. As per the schedule, the candidates filled up the nomination form in terms of Section 33 of the Act. The present Election Petitioner has also filled up her nomination form as a candidate of Samajwadi Party and was allotted a symbol of Cycle. The returned candidate (respondent No. 1), Ajit Singh Pal submitted his nomination form as a candidate of Bhartiya Janata Party (B.J.P.) and was allotted symbol of 'Kamal Ka Phool' (lotus). Similarly the other candidates who have been impleaded as responden nos. 2 to 10 are of different parties and were also allotted other symbols, details of which are mentioned in para 4 of the petition. The Returning Officer after scrutinizing all the nomination papers of all the candidates of the constituency, published a list of contesting candidates in terms of Section 38 of the Act whose names are given in tabular form in para 5 of the Petition. The counting of votes took

place on 14.12.2017 and on the same day, result was announced by the Returning Officer wherein respondent no. 1-returned candidate was illegally declared elected from the constituency in question. The election of the returned candidate is being assailed on the following grounds: (a) the election of the respondent no. 2-returned candidate has been materially affected on account of noncompliance by the Returning Officer of mandatory provision of Sections 64 and 66 of the Act and Rules 49-S, 55-C, 56-C, 56-D and 66-A of the Rules of 1961, who has acted against the said provisions; (b) The election of returned candidate has been materially affected on account of improper reception of votes of Electronic Voting Machines, seals of which were found tampered with and broken at the time of counting; (c) the election of the returned candidate has been materially affected on account of the fact that the presiding officer did not give true copy of the entries made in Form 17-C after obtaining receipts from the polling agents at the closing of poll to the polling agents of the Election Petitioner and other candidates (this during the arguments was argued to be the main ground on which the learned counsel for the petitioner wanted the election of the elected candidate to be declared null and void and did not lay much emphasis on other grounds which were mentioned in the petition); (d) the election of the returned candidate has been materially affected on account of the fact that there were two rooms in strong room and on the date of counting, the election petitioner and their representatives were present at the counting premises on time but one room out of two strong rooms was opened by the Returning Officer in absence of the election petitioner and her representatives without calling them to remain present at the time of opening of the strong room. After opening of one of the strong rooms, an announcement was made by the Returning officer asking the candidates and representatives to come for opening of the strong room and then only the second room of the strong room was opened in presence of the candidates and their representatives. The election petitioner and her representatives were not permitted to inspect the seals of one of the strong rooms, where, the E.V.Ms. were also kept and were brought for counting; (e) the election of the returned candidate has been materially affected on account of the fact that Returning officer permitted only 14 counting agents to be appointed by the petitioner and other candidates and she (Returning officer) did not permit the petitioner and other candidates to appoint 15th counting agent for central table/Returning officer's table during counting. There was no access of the election petitioner, her election agents and her counting agents to the central table/Returning officer's table during counting. The computation and compilation of data from each table, at the conclusion of a round was done at the Returning officer's table/central table, in absence of election petitioner, her election agents and her counting agents; (f) The Election of the returned candidate has been materially affected on account of the fact that seals of E.V.Ms. were continuously being found tampered with and broken from the very first round of counting till completion of counting. The complaints were made to the Returning Officer by the counting agents of the election petitioner. During counting, complaints were made to the effect that the seals of E.V.Ms. were found broken and tampered with and that E.V.Ms. had been manipulated in favour of the returned candidate. However, the returned candidate was adamant to ignore the complaints and illegally kept counting continued. Even the announcement of votes obtained by each candidate in the counting from 10th to 17th round of counting, were not announced. On protest being made by the election petitioner, her election agents and counting agents, they were forcibly ousted from the counting campus. During this period, the seals of the EVMs were also found broken. The election petitioner and her election and counting agents were permitted in, only from 18th round of counting onwards, however, the seals of the E.V.Ms. were also found broken and tampered with from the 18th round till the completion of 28th round of counting which too was reported by the counting agents of the election petitioner to the Returning officer; (g) the election of the returned candidate has been materially affected on account of the fact that after the completion of counting and after entries made in the result-sheets, but before

signature of the Returning Officer on the result-sheet, the election petitioner made application in writing complaining about the seals having been found tampered with and seals being found broken of the E.V.Ms. of the several polling booths during counting, with the request to the Returning officer to count the V.V.P.A.T. print paper slips in drop box of the printer in respect of 391 polling booths, but Returning Officer illegally rejected the application of the Election Petitioner without examination in violation of the direction of Election Commission of India with a false recording that no complaints were ever made by any agent during all rounds of counting and that V.V.P.A.T. print slips were counted of booth no. 135 of table no. 4 in 11th round; (h) the election of the returned candidate has been materially affected on account of the fact that EVMs were manipulated to benefit the returned candidate and accordingly, the seals were tampered with and broken. However in spite of the fact that the Returning officer illegally counted votes of tampered EVMs of booth no. 135 of table no. 4 in 11th round of counting, without recording reasons in writing, to conceal manipulation and benefit given to the returned candidate-respondent no.1; (i) the election of the returned candidate has been materially affected on account of the fact that provisions of Constitution, Act and Rules framed thereunder as well as the orders and instructions issued under the Constitution by the Election Commission of India have not been complied with in counting of votes.

5. Further it is submitted that concise statement of material facts regarding grounds (a) to (i) is that there was improper reception and counting of votes of E.V.Ms., seals of which were tampered with and broken on the date and time of counting i.e. on 24.12.2017 and also there was non-compliance of the mandatory provisions of the Act and Rules stated above. Further it is mentioned that on the date of polling i.e. 21.12.2017, the presiding officer did not give true copies of Form No. 17-C to polling agents containing the details of counted votes on the end of counting. There were total 391 polling booths and true copy of account of votes in Form 17-C was not given to any of the polling agents of the election petitioner nor was it given to any of the polling agents of any contesting candidates of the said constituency. Further it is mentioned that counting agents of the Election Petitioner made complaint in writing about the tampered seals to the Returning officer in different rounds. The election petitioners' counting agent, Mahendra made written complaint of broken seals of EVMs of booth no. 1 (counting table no. 1), counting agent, Ram Naresh made complaint of broken seals of EVMs of booth no. 126 (counting table no. 8), counting-agent, Anoop Kumar made complaint of broken seals of EVMs of booth no. 16 (counting table no. 2), counting agent, Arvind Kumar made complaint of broken seals of EVMs of booth no. 254 (counting table no. 5) etc. Further it is submitted that the Returning officer did not make announcement of the vote counted and obtained by different candidate from 10th round to 17th round of counting. The election petitioner, her election agents and counting agents made protest with respect to this non announcement and then they were forcibly ousted from counting premises by the Returning officer during the period of counting from 10th round to 17th round. The seals of the EVMs were being continuously found tampered with and broken from 10th round to 17th round. Announcement of the counting of votes resumed from the 18th round of counting and then only the election petitioner and her election and counting agents were permitted to enter counting premises and participate in counting. The other contesting candidates and their election and counting agents were also continuously making complaints of non announcement of votes. They were also forcibly ousted from the counting premises during the 10th to 17th round of counting. However, the returned candidate, respondent no. 1's agents remained present during the said round of counting from 10th to 17th round. Further it is submitted that seals of EVMs (control unit) were again continuously found tampered with and broken from 18th round till the completion of 28th round of counting. The election petitioner's counting agent, Arvind Kumar made a complaint in writing of broken seals of EVMs of booth no. 254 at table no. 5 in 28th round of counting. Further it is mentioned that after completion of

28th round of counting and after entries had been made in the result sheet but before the signature of Returning officer on final result sheet, Form No. 20, the election petitioner immediately made application in writing to the Returning officer to count the VVPAT printed paper slips and drop-box printer with respect to the EVMs of all polling stations from booth nos. 1 to 391 on account of tampering and broken seals of several EVMs found at the time of counting as well as announcement of the votes obtained by the candidates. From 10th round to 17th round, the protest were made by election petitioner and her agents but they were forcibly ousted from the counting premises. The election petitioner also made an application in writing to the District Election Officer, Kanpur Dehat/Chief Election Officer, Uttar Pradesh that the announcement of counting were not made from 10th round to 17th round and on protest being made, they were forcibly ousted from the counting premises and that the seals of the E.V.Ms. were found tampered with and broken at the time of counting. The Returning Officer duly received election petitioner's complaint addressed to the District Election Officer, Kanpur Dehat/Chief Election Officer, Uttar Pradesh on their behalf, before signing the sheet but she did not examine the request for re-counting of printed paper slips, made by the petitioner which was required to be done as per the direction of the Election Commission of India and rejected her request recording that counting was completed in presence of the agents and that no agent had made any complaint in any round of counting and that there was no reason for V.V.P.A.T. paper slips to be counted. The Returning officer, however, has recorded that the VVPAT printed slips were counted of booth no. 135 in the eleventh round of counting on doubt being raised, in which, result of the control unit and the VVPAT were found equal. The Returning Officer had passed this order on the complaints made by the election petitioner to the Returning officer as well as the District Election Officer, Kanpur Dehat/Chief Election Officer. Further it is mentioned that the Returning officer recorded a false and vague reason for rejecting the petitioner's request for recounting of VVPAT slips because the counting agents of the election petitioner had made continuous and repeated complaints of tampering and seal being found broken of the EVMs from the very first round till the completion of 28th round of counting. The Returning officer was under statutory obligation to re-count the VVPAT slips of EVMs of all polling booths on the application of the Election Petitioner when the seals of EVMs were found tampered and broken on several booths on different tables in different rounds of counting. Election petitioner had minor difference of votes from the winning candidate in different round of counting which was only due to manipulation and counting of votes of tampered EVMs. Further it is mentioned that the Returning Officer, Deepali Kaushik, S.D.M., Sikandara, Kanpur Dehat deliberately favoured the returned candidate who belonged to ruling party (BJP) by manipulating the EVMs and getting the counting conducted in a manner so that it would benefit the returned candidate. The petitioner has secured 61455 votes while the returned candidate has secured 73325 votes, therefore the result stands vitiated due to illegal manipulation of EVMs and counting of votes and non-compliance of mandatory provision of Act and Rules and directions issued by Election Commission from time to time regarding counting. The election of the returned candidate has been materially affected by the facts narrated above, which has breached the purity of election. Certified copy of the Form No.-20 'final resultsheet' [Rule 56-C (2)] of Vidhan Sabha By-Election of 2007, Sikandara, Kanpur Dehat has been appended as Schedule-1. The Election Petitioner has obtained majority of valid votes higher than the returned candidate which would be clear on re-counting of VVPAT slips. The Election Petitioner has also deposited requisite amount of Rs. 2,000/- in the treasury towards security of the Election Petitioner and the receipt of depositing of the said amount, is annexed with the Election Petition.

6. From the side of returned candidate, Written Statement has been filed refuting the allegations made in the petition, averring therein that without having concise statement of material facts regarding corrupt practice, on which the petitioner relies, this Election Petition has been filed and also the petitioner has

failed to provide any documentary evidence of the persons involved in alleged corrupt practice and as such, Election Petition is not maintainable under the provision of Section 83 of the Act which has been reproduced in para 3 of the Written-Statement. Further it is submitted that all the allegations made in the petition are against the Returning Officer appointed for the constituency in question but Returning Officer has not been arrayed as respondent and as such Election Petition is not maintainable as mandatory provisions of Section 82 of the Act has been breached. The said provision has been quoted in para 5 of the Written Statement. Further it is mentioned that in **KT Kosalram Vs. Dr. Santhosham and Others AIR 1969, Madras 116** (High Court has specifically held that whenever there are allegations of bad faith, misconduct and propriety and not merely illegality against the Returning Officer in an Election Petition, the Returning Officer is a proper party, though not necessary party. In proper cases, the Returning Officer may be a proper party to the Election Petition, even though Section 82 of the Act does not make him a necessary party. Section 90 of the Act enables the Tribunal to implead the Returning Officer as a party as per the Civil Procedure Code which are expressly made applicable to the trial of Election Petition subject to the provisions contained in the Act and the Rules made thereunder. Further it is mentioned that petitioner has not enclosed any documentary material with the Election Petition in support of her allegations made with regard to corrupt practice, from opening of the strong room up to the declaration of final result, hence the petition deserves to be dismissed ab-initio. Petitioner has lost the election with a margin of 11870 votes and was never satisfied with the result and somehow wanted to raise hurdles in smooth working of the returned candidate. Grounds to seek election to be declared void are solely based on alleged misconduct, illegality and impropriety on the part of the Returning Officer and not against the returned candidate. Allegations are only to the extent of tampering of EVMs and about their seals being found broken but not with regard to machines itself or manipulations regarding data released by the machines. The Election Petitioner was supposed to produce all documents in her possession upon which she relies, to fortify her claim, but in the present case, the Election Petitioner has failed to do so which was in violation of mandatory provision of Order 7, Rule 14 C.P.C. It is further mentioned that Election Petitioner has sworn her petition relating to paragraph nos. 9, 10, 13, 19, 22 and 29 as “derived from the record and from information received from my supporters, election agents and other persons” but she has neither disclosed the specific particulars about her sources nor has she produced any document in support of other pleadings. Election Petition is defective one because para 20 of the petition could not be sworn by petitioner and further nonexisting para 29 has been sworn by Election Petitioner. Entire petition does not contain any ground as provided under the Act for getting the Election set-aside, of the returned candidate/respondent no. 1. Pleadings are totally bereft of the material facts and do not amount to stating any ground for getting the Election set-aside, of returned candidate. Pleadings as they stand, do not disclose the cause of action for the trial, therefore, Election Petition is liable to be dismissed under provisions of Order 7 Rule 11 of CPC read with Section 81 of the Act. The petitioner has referred to a number of documents which form basis of the allegations but copies of none of them has been filed nor supplied to the answering respondent, therefore, there is non-compliance of Section 81 (3) of the Act, hence Petition is liable to be dismissed.

7. With respect to the averments of the Para 7 of the Petition, it is submitted that the contents of the said para are erroneous, hence denied. All the allegations of misconduct, illegality and impropriety on the part of the Returning Officer for getting the election result of winning candidate to be declared void, are bogus and non existing, because neither the returned candidate nor his agents or other contesting candidates or their agents had made any complaint during entire counting proceedings which had been witnessed by them all. Contents of para 8 of the Petition are also stated to be erroneous and denied and it is submitted with respect to that opening of both the rooms in the strong room had been witnessed by

all the contesting candidates and their agents and none of them had made any complaint in this regard before Returning Officer or any authority concerned.

8. With respect to para 9 of the petition which relates to the averment that Presiding Officers did not give true copy of the entries made of the count of votes recorded in Form-17-C to the polling agents and the Election Petitioner present, at the close of poll at all polling booths, is stated to be erroneous and has been denied. Regarding this, it was much emphasised by the learned counsel for the petitioner that such kind of cryptic denial would amount to admission of the contents of the said paragraph as there is no specific denial that the copies of Form-17-C were not provided to the polling agents of the Election Petitioner as per the mandatory provision of law and it was also stated by him that non providing of copies of Form-17-C would also mean that the same was not prepared at all by the presiding officers/concerned authority which would render the election void. Reliance was also placed by learned counsel for the petitioner upon **Sushil Kumar Vs. Rakesh Kumar 2003 (8) SCC 673** in which it was held that an evasive denial would amount to admission of allegations made in the statements and no evidence contrary thereto or inconsistent therewith would be permissible.
9. With regard to averments in para 10 of the Petition, it is submitted that the same are erroneous and hence denied. Petitioner never provided true/certified copy of the complaint allegedly made by her counting agents i.e. Mahendra, Ram Naresh, Anoop Kumar and Arvind Kumar before the High Court.
10. With respect to contents of Para 11 of the petition, the same are stated to be erroneous and hence denied and it is further stated that agents of the petitioner were never absent from the counting proceedings as alleged that they were ousted forcibly after the conclusion of 17th round of counting. The same is absolutely false.
11. With regard to averments in para 12 of the Petition, it is stated to be erroneous and hence denied and it is further submitted in this regard that from the statement of petitioner herself all her counting agents again appeared in the counting proceedings prior to the starting of 18th round of counting.
12. With regard to contents of para 13 of the Petition, the same are denied as erroneous and further submitted that none of the contesting candidates or their agents came forward with any complaint about broken seals of EVMs nor the petitioner provided true/certified copies of the complaint made by Arvind Kumar as claimed.
13. Contents of para 14 which contains the details of lapses in counting, are stated to be erroneous and, hence denied.
14. Contents of para 15 which relates to Returning Officer having duly received the Election Petitioner's complaint addressed to her, District Election Officer and Chief Election Commissioner, U.P., has been stated to be erroneous and hence denied.
15. With regard to contents of para 16 of the Petition which is related to non examination of request of recounting of VVPAT printed paper slips, the same is said to be erroneous and denied and it is further submitted that the allegation of tampered and broken seals of EVMs were found false by the Returning Officer as admitted by the petitioner herself and, therefore, there was no occasion to count the VVPAT printed paper slips of the Drop Box of EVMs concerned. Further it is submitted that petitioner never produced true/certified copy of the application and its rejection by the Returning Officer.
16. Contents of para 11 (it appears to be wrongly mentioned as 11 as it appears to be para 17 because para 11 has already been dealt with) are stated to be erroneous and denied which too relates to the Returning Officer having recorded the false and vague reason for rejecting the petitioner's request for recounting of VVPAT slips.

17. The contents of para 18 of the petition which is related to the counting of VVPAT slips and because of the allegation of the EVMs found tampered with, by which it was said that Returning Officer was under statutory obligation to recount the VVPAT slips, the same is stated to be erroneous and hence denied and it is submitted that the Returning Officer could not be compelled to count the VVPAT printed paper slips under undue influence on the basis of bald allegations only to scandalize the election proceedings with ulterior motive. Further it is submitted that the petitioner has contested the election, who is an MLA of outgoing ruling party having lost mass support because of previous misdeeds and anarchy and, therefore there was little probability of her to win and the returned candidate has been made victorious by huge margin of 11870 votes.
18. Allegation with respect to para 20 relating to Returning Officer having favoured the Returned Candidate, has been stated to be erroneous and, hence denied.
19. Averments made in para 21 of the Petition which is wrongly mentioned as para 11, which pertains to vitiation of election due to illegal manipulation of EVMs and non compliance of mandatory provisions of Act and Rules and the benefit being given by the Returning Officer to returned candidate are denied and it is stated that returned candidate has good record of public service and his credibility and reputation is well established in the area.
20. The averments of para 22 of the Petition relating to the claim of the petitioner of having obtained valid votes of majority, is also stated to be erroneous and denied and further submitted that there was a wave in favour of BJP in whole country including U.P. and the petitioner has contested from Samajwadi Party who had lost his credibility due to misdeeds and anarchy, therefore, it is mentioned that in the interest of justice, the Election Petition of petitioner deserves to be dismissed to meet the ends of justice.
21. On the basis of pleadings of respective parties, the Court has framed following issues vide order dated 26.04.2019 which are as follows:-
 - “(i) *Whether E.V.M. machines are found tampered with and their seals broken of the booths as alleged in para 10 of the plaint?*
 - (ii) *Whether provisions of Section 64 and 66 of Representation of People's Act, 1951 and Rule 49-S, 55-C, 56-C, 56-D and 66-A of Conduct of Election Rule 1961 have been violated. If yes, its effect ?*
 - (iii) *To what relief, if any, plaintiff is entitled?*
 - (iv) *Whether Election Petition is not maintainable due to being bereft of material fact as stated in para 16 of the Written Statement?”*
22. In order to prove the claim in the Petition, from the side of petitioner, following documentary evidence has been presented which are Paper No. A-17/1, A-18/1, A-19/1, A-20/1, A-21/1, A-22/1, A-23/1, A-24/1, which are copies of complaints moved from the side of Election Petitioner and her agents during the election proceedings. In oral evidence, the petitioner has examined herself as P.W. 1, Anoop Kumar as P.W.2, Arvind Kumar as P.W. 3, Shamshul Kamar as P.W. 4, Virendra Kumar as P.W. 5, Siddhartha Katiyar as P.W. 6 and Md. Imran as P.W. 7, thereafter the evidence of petitioner was closed and opportunity was given to the respondent.
23. From the side of respondent, Deepali Bhargawa (Kaushik), SDM, Bhognipur, Kanpur Dehat who was the then Returning Officer of the constituency in question has been examined as D.W.-1.
- 23.A. The arguments were heard of the learned counsel for both the parties and perused the record.
24. **Finding on Issue No. 1**-This issue relates to the fact as to whether EVMs are found tampered with and their seals broken of the booths as alleged in para 10 of the complaint. The said para contains the fact

that seals of EVMs (control unit) were found tampered with and broken right from the beginning of the counting which remained continued till the completion of last round of counting. Counting agents of the Election Petitioner had made complaints in respect of the EVMs' seals having been found broken and tampered with during the counting, continuously and repeatedly to the Returning Officer.

25. Counting agents of the election petition made complaint in writing of the tampered seals to the Returning Officer in different rounds, the petitioner's counting agent, Mahendra made written complaint of broken seals of EVMs of booth no. 1 (counting table no. 1), counting agent, Ram Naresh made complaint of broken seals of EVMs of Booth No. 126 (counting table no. 8), counting-agent, Anoop Kumar made complaint of broken seals of EVMs of Booth No. 16 (counting table no. 2) and counting-agent, Arvind Kumar made complaint of broken seals of EVMs of Booth No. 254 (counting table no. 5) etc.
26. From the side of respondent, the said allegation has been denied and it is submitted that the petitioner never provided true/certified copy of the said complaints allegedly made by her counting agents, Mahendra, Ram Naresh, Anoop Kumar and Arvind Kumar.
27. In order to prove this issue, from the side of petitioner, she herself has been examined besides the two complainants i.e. Ram Kumar as P.W.2 and Arvind Kumar as P.W. 3. besides that some other witnesses who have been named above, therefore, an assessment has to be made about truthfulness of the allegations on the basis of evidence which has been adduced from the side of petitioner mentioned above.
28. The petitioner herself has repeated the same version in her examination-in-chief as mentioned in election petition and in cross16 examination, she has stated that the name of the election agent appointed by her was Virendra Sharma. The election was held on 21.2.2021. She cannot tell the number of polling agents appointed by her. On the basis of conjecture, she stated that approximately 300 polling agents might have been appointed by her. On the date of voting, she was out side of the Mandi Samiti. She cannot tell as to how many polling booths, she had visited on the date of polling. On the date of polling, her agents were on the round. There were in all three blocks, out of which, on one block she herself was present and on the remaining two blocks, her agents were present. The name of the said three blocks are Sikandra, Derapur, the name of third block she does not recollect. When she was on the round, she met polling agents. A question was put to her as to whether any polling agent had disclosed to her about any EVMs to be defective, to which, she answered that she was on the round and she herself had seen that there was tampering in the EVMs. She has also stated that the people who were there, had said that these peoples were going who would get the EVMs changed. She had not made any complaint either orally or written. When she had reached the polling booth, regarding mischief, nothing was disclosed to her by her polling agents but regarding it, public had told her. She did not stay at the said polling booth for long so as to see whether EVMs had been changed or not. The counting was held on 24.12.2017. She had appointed 14 counting agents. The counting was held in Akbarpur Mandi Samiti. She had not gone earlier to the place where counting was held at the time of counting but subsequent to that, she had gone there when her agents had disclosed to her that there was mischief being done in the counting. She had asked her agents that they should make a complaint regarding mischief going on. Regarding mischief in counting, orally counting agents had told her. The counting agents had come to her and then had told her that there was mischief being done in counting. When a question was put to her as to when she had approached the counting centre, she replied that when her agents had been driven away from the counting centre, thereafter she had gone there. Further, she had stated that she had gone at the counting centre when 19th round of counting was going on. Her counting agents had gone since morning at the counting centre and from 7.00A.M. till 5.00 p.m. the counting process was going on. On 24.12.2017 she had given an application to the Returning Officer,

207 Sikandra Constituency, Kanpur Dehat, which was written in her handwriting and was signed by her. Mahendra, Ram Naresh, Anoop Kumar and Arvind Kumar, who were her agents, had given applications to the Returning Officer on 24.12.2017. The reference of the document which has come in para-10 of her examination-in-chief, the said document has not been annexed by her with the petition (The said reference in paragraph-10 is related to Form No.17-C) but she cannot tell as to why the said document had not been annexed with the petition. The election petition was presented by her before the Registrar General but she had no knowledge as to what papers were annexed with her petition. When she had gone at the counting centre in the 19th round, she had talked to her counting agents there. She had not gone near the table at the counting centre because permission was not granted nor did she apply to seek permission to go there from anyone although she had told her agents that they should go there but she had no knowledge as to whether counting agents had made any effort to go there or not. Her agent Vinod Sharma had told her that permission was not granted to him to go there. Approximately, seals of 125 EVMs were found broken thereafter she said that the seals of all the EVMs were found broken but she had not mentioned the said fact in her petition. When it was asked from her as to whether the said fact was right or wrong, she replied that regarding few EVMs, she had come to know that their seals were found broken. She was again put a question as to why at four voting centre, her agents had made complaint for mischief and not at the other centres, she replied that her agents at other counting centres had also moved complaints but the same have not been filed by her with the petition. The examination-in-chief has been submitted by her on the affidavit which has been prepared by her advocate after having obtained information from her. She had narrated the facts relating to the petition in Hindi which were translated by her counsel in English. She admitted that at booth no. 135 vote count of VVPAT was done and the number of votes was found correct at the said booth. Later on, she said that she cannot tell as to how it has been written because she was not present at the counting. When she was put a question as to whether her counting agents were driven out from the counting premises between 10th-17th rounds, she answered in the affirmative. Then a question was put to her as to how she came to know that seals of the EVMs were found broken during the counting of 10th-17th rounds, she replied that she and her men had been driven away but others were inside the premises from whom she had come to know about this fact.

29. After having drawn attention to the said statement of this witness, it was argued by the learned counsel for the respondent that the statement of this witness appears to have been given in a general way about mischief having been done in the counting because she was not present on the place, where counting was going on and she has also admitted that at booth no. 135 count of VVPAT was done and number of votes were found correct and from 10th to 17th round when her agents were not allowed to remain inside the premises, how could they come to know that EVMs from which the votes were counted in between, were found with broken seals, it has not been clarified. She has also not disclosed the names of such persons from whom her agents came to know about the seals of the EVMs being found broken which were counted between 10th-17th round, therefore it is argued by the learned counsel for respondent that her statement in this regard should be discarded and if cannot be held that EVMs were found defective and that there were errors in counting process.
30. Anoop Kumar PW-2 has stated in examination-in-chief that the EVMs of broken seals of booth nos. 16, 30, 57, 71, 121, 251, 264, 304, 330 and 358 were brought to his table for counting and finding the seals of EVMs broken of booth no. 16, Banipara, Meharaj, in second round of counting, he made a written complaint of the same to the Returning Officer. In the 10th round of the counting, the seals of 10-11 EVMs were found broken, consequently the agents present in the counting premises, made serious protest and thereafter all the agents of the petitioner were threatened and forcibly ousted by lathi charge from counting premises and they were not permitted to enter the counting premises. The result of the counting of 10th to 17th round was also not announced. When a complaint was made in

this regard to higher authority, only then they could be permitted to enter into the counting premises in the middle of 18th round of counting. Further, it is stated by him that the seals of the EVMs, which were brought for counting between 19th to 28th rounds, were also found tampered and broken and when protest was made by him and other agents, the Returning Officer did not take any action and ultimately Seema Chauhan, petitioner made an application for recounting, to the Returning Officer and the District Election Officer, which was not considered and rejected and the result was declared.

31. This witness had been cross-examined by the counsel for the respondent and it is stated by him that he had reached at the place where the counting was going on between 6.30 A.M. to 7.00 A.M. He was counting agent at table no. 2 and with whom there were other counting agents of the other parties as well. He had made a complaint regarding mischief in counting. He had given an application, in writing that the seals of EVMs were found broken. The seals of machines were found broken from which votes were counted. This application was given by him to the Returning Officer, Ms. Dipali Kaushik. The counting began at 8.00 A.M. and he was thrown out three hours thereafter and thereafter he stated that all of them were driven out of the counting premises. Then he stated that all the counting agents of the petitioner were driven out. On his own, he has further stated that the EVMs with broken seals were brought for counting, then people were protesting in that regard but no altercation took place with any authority and when he made a complaint, he was thrown out of the premises. He had given written complaint to the Returning Officer himself but he does not recollect whether receiving was obtained by him or not. He himself had gone near the Returning Officer.
32. Citing the above statement of this witness, it was argued by the learned counsel for the respondent that he has also given general sort of statement that mischief in counting was going on and that the seals of the EVMs were being found broken at the time when they were brought for counting and when a protest was made, initially he stated that all the agents of all the parties were threatened and thereafter he had modified his statement saying that only he and all the agents of the petitioner had been driven away from there. Special attention is drawn of the Court that if any application/complaint had been made by him, a receiving of the same ought to have been taken but this witness has stated that he does not recollect as to whether any receiving was taken or not which creates doubt about any such written application having been moved by him.
33. Arvind Kumar has been examined as PW-3, who has stated in examination-in-chief that he was counting agent of the petitioner and that the EVMs of tampered and broken seals were coming on his table right from beginning of the counting which was protested to the Returning Officer but the same was over looked. Seals of EVMs of booth nos. 33, 123, 240, 254, 307 and 361 were brought on the table of this witness (Table No.5), seals of which were found broken and tampered. Further, he has stated that in the 10th round of counting, seals of around 10 to 11 EVMs were found broken, consequently, the agents present in the counting premises made serious protest thereafter all the agents of the petitioner were threatened and forcibly ousted from the premises by lathi charge. Counting result of 10th-17th round was not announced nor was this witness permitted to enter into counting premises. When complaint was made to the higher authority then only he was permitted to enter into the counting premises in the middle of 18th round of counting. He had made a serious complaint to the Returning Officer in 20th round of counting but the same was over looked by the Returning Officer. The EVMs with tampered and broken seals were brought between 19th-28th rounds which was also protested but the Returning Officer did not take any action, ultimately the petitioner made an application for recounting to the Returning Officer and the District Election Officer which was not considered and rejected and the result was declared.
34. In cross-examination, this witness has stated that at a time only one machine used to be brought and it used to be checked by him as to whether its seal was broken or not. The checking of the machine used

to be done by the officer which was witnessed by him. He is not a politician and is a farmer and earlier also he had participated in the counting of votes, however, he has never contested any election. One seal was affixed on thread, which was found broken. The machine was brought in a cover/box/attachee. The seal was affixed at the box and also at the voting machine. Both the seals were found broken before him. In front of him, 28 EVMs were counted, out of which seals of 10 to 12 EVMs were found broken and the seals of both cover as well as machine kept inside were found broken. Besides himself, others who were present there had also made a complaint in this regard. He himself had given written complaint to the Returning Officer but he does not recollect whether he had taken receiving of the same or not. During counting process, he often used to have a talk with the agents of the petitioner who were present on other counting tables. During the counting of 9th round, it was brought to the notice of the authorities that seal was found broken, then authorities told him that he may either leave or may continue to stay there. He had made only one complaint. In the 18th round of counting, he and all other agents had returned. He had told all these facts to his counsel, thereafter his affidavit has been prepared.

35. After having drawn attention to the statement of this witness, it is argued by the learned counsel for the respondent that he had also given general sort of statement that the seals of 10 to 12 EVMs were found broken. It is pointed out that had he made a complaint, he would certainly have got a receipt of the complaint made by him regarding which he has clearly stated that he does not recollect.
36. Shamshul Qamar has been examined as PW-4, who has stated in examination-in-chief that the EVMs with tampered and broken seals of booth nos. 27, 54, 118, 131, 275, 288, 301, 313, 341 and 355 were brought on the counting table no. 13 of which he was the counting agent of the petitioner, regarding which a complaint was made to the Returning Officer but EVMs of tampered and broken seals were continuously being brought on the counting table right from beginning and when the complaint was made, no action was taken by the Returning Officer. In the 10th round of counting, the seals of approximately all the EVMs were found broken, consequently the agents present in the counting premises made serious protest. Thereafter, all the agents of the petitioner were threatened and forcibly ousted by lathi charge. The result of the counting from 10th to 17th round was also not announced and he was not permitted to enter the counting premises. When complaint was made to higher authority, then only he was permitted to be present in counting premises in the middle of 18th round of counting. Further, it is stated that EVMs with tampered and broken seals were brought for counting in between 19th to 28th round and when protest was made by him and other agents, no action was taken by the Returning Officer, thereafter the petitioner had made a complaint for recounting before the Returning Officer and District Election Officer, but the same was rejected and result was declared.
37. In cross-examination, this witness has stated that he was on counting table no. 13 and about 28th rounds of counting had happened at his table but out of those rounds, he was present during 18th round of counting and for the rest of the rounds of counting, he was thrown out. Thereafter, he has stated that in the 10th round of counting, he was thrown out and returned in the middle of the 18th round of counting. When he was protesting there at the beginning of 10th round of counting, force was called and it was asked by the force that if he wanted to stay, he could stay otherwise he could leave and thereafter he was thrown out by force from the counting premises because he was protesting counting to proceed. He returned in the middle of 18th round of counting because the petitioner had held talk with higher authorities. Virendra Sharma election agent, who was inside, had told him that he should come in. In voting machine, there was strip of paper on which seal was affixed which was found broken. The said machine was kept in a box and on that box seal was affixed with thread which was found broken but he cannot tell as to of how many machines as well as boxes the seals were found broken but most of them were found broken. A complaint was made about the seals being found

broken by the agents but all of them were driven away from the counting centre. Even after having been driven away, there were some agents of other parties left inside the counting premises before whom the counting was held. He too has stated that an affidavit was prepared by his counsel at his dictation of this occurrence.

38. Virendra Kumar has been examined as PW-5, who has stated in examination-in-chief that EVMs with tampered and broken seals were continuously brought to his table from the beginning and the same continued till the end of the counting of 28th round which was protested by him and other counting agents but no action was taken on their complaint by the Returning Officer. The Returning Officer did not verify and match the counting result by counting of VVPAT slips. When about 12 EVMs were brought for counting in the 10th round, this witness and other counting agents had vehemently opposed and then they were forcibly ousted from the counting premises by lathi charge. Between 10th to 17th rounds of counting, he was not permitted to stay inside and then a complaint was made by the petitioner to the higher authorities, thereafter, in the middle of 18th round of counting he was permitted to enter the counting premises and thereafter between 19th to 28th round, he continued to protest, when he found that EVMs with tampered and broken seals were brought for counting but his complaint was ignored by the Returning Officer. After 28th round of counting, the petitioner made a complaint to the Returning Officer and the District Election Officer but that was not considered and rejected. The Returning Officer hurriedly had obtained signature of Ajit Pal, the winner of this election. The petitioner's application for recounting was arbitrarily rejected by the Returning Officer recording that on objection of the counting of booth no. 135 at table no. 4 in 11th round, VVPAT slips were counted in the presence of the agents in which control unit and VVPAT results were found the same. He has recorded the details of EVMs with tampered and broken seals brought for counting table-wise and round-wise in his diary. There were 111 EVMs with broken seals which were brought for counting, details of which were recorded by him, which are given in tabular form, which is annexed at page-5 of his examination-in-chief.
39. This witness in cross-examination has stated that at 91 polling booths, the polling agents were appointed by him and at 300 polling booths, polling agents were made by the petitioner. He had reached at the place of counting at 6.00 A.M. at Akbarpur Mandi Samiti as election agent of the petitioner. He had asked for 15 counting agents to be permitted but only 14 agents were allowed. There were 14 counting tables and at all the 14 counting tables, his counting agents were present at the counting centre. The counting had began at 8.00 A.M. and on each table, he used to come and ask from the counting agent with respect to number of votes cast in favour of the petitioner. Counting had begun at all the 14 tables simultaneously and during counting process, he had made a complaint to the Returning Officer in his own handwriting and correct version was given of the fact. He had complained that seals of EVMs were found broken. This complaint was given by him to the Returning Officer but he admitted that there is no such complaint in the file but he cannot tell its reason as to why copy of any such complaint made by him, has not been given by the petitioner in Court. Later on, he has stated that its reason could be that he did not have any receiving of the said complaint. After 10th round and in the middle of 18th round, he had returned, where-after he remained present there. During that period, the agents of the other parties like Congress etc. had also made a complaint regarding broken seals. He is also a voter of Sikandra Constituency and had exercised franchise also but cannot tell on which booth he had cast his vote. He had exercised franchise between 8.00 to 8.30 A.M and thereafter he had gone in his area from the booth where he had cast vote. At the booth where he had cast the vote, he had gone again there at 1.00 P.M. and having stayed there for about 10 minutes and having seen that everything was all right, he returned to his area. He had gone to Derapur block and Sandalpur Block. He had also gone to the place where EVMs were stored after polling was closed. These EVMs were kept in two strong rooms and seals of the EVMs as well as strong rooms were affixed in his presence.

During polling, he had gone to all the polling stations and had met the polling agents and they told him that everything was going on all right. He had not prepared any such index wherein he may have entered as to which places he had visited and to whom he had met there. The EVMs, after polling, when they were kept in Mandi Samit, till then he had not made any complaint. Prior to starting of counting, he had made a complaint regarding one polling booth in respect of EVMs being in defective condition, which was later on got corrected/rectified. The officials were bringing EVMs at all the 14 tables. All of them (including this witness) had reached the place of counting at about 6.30 A.M. where they were informed that all should come near strong room because strong room was to be opened. At about 7.00 A.M., he had reached the strong room. When he reached there, besides him, BJP candidate and one or two other persons were present. There was no one else present from other party. The lock of one strong room had already been opened before he reached there but the lock of other strong room was opened in front of him but he was not allowed opportunity to check the seals. The seal of the second strong room which was opened before him, was found broken. Two other persons, who were present in strong room, he does not know them. He had made a complaint that one strong room was opened prior to his reaching there while the seal of the other strong room was found broken. This complaint was made to the Returning Officer and in that regard, he had also given information to the petitioner. Thereafter, he went to counting table. The Returning Officer remained present throughout the counting. He and his counting agent used to give complaint to the Returning Officer after meeting her. He had gone away from there prior to starting of 10th round of counting and returned in the middle of 18th round of counting. From middle of 18th round of counting, all the agents had returned and remained present there till the completion of the counting. During the counting, he had made no other complaint except that the seals were found broken. He had no dispute with the Election Officer or any official. He had disclosed all the facts to his advocate in Hindi, who had prepared his affidavit in English.

40. The statement of PW-5 is on the same line which has been given by PW-4. As regard the statement of PW-5, it is argued by the learned counsel for respondent that the statement of this witness clearly shows that he was absolutely satisfied with the polling as no complaint was ever made during the polling and he had remained on the place of polling throughout till the EVMs were kept in the strong room. As regard complaint having been made by him with respect to seal of one of the strong rooms being found broken at the time when he reached there and regarding the other room having been opened already before his reaching there, there was no such complaint, in writing, made. No reason has been shown as to why such a complaint was not made with him and why the same has not been made a part of the record.
41. Shaurabh Katiyar has been examined as PW-6, who has given similar statement in examination-in-chief as has been given by PW-4 and PW-5 but in cross-examination, this witness has stated that this was his first experience as a counting agent. He was supposed to see the seals of EVMs first and thereafter he was supposed to note down as to how many votes were cast in favour of the petitioner. Whatever number of votes were cast, after being told about it, he used to note it on a paper. How many votes were cast in favour of the petitioner and other candidates, were disclosed through EVMs. He could tally up all the facts i.e. votes cast in favour of the candidates with whatever he saw in the EVMs and it used to be noted by him. The counting was held in Mati Cricket Stadium which was situated by the side of the Police Line. He had reached there at about 6.00 A.M. and table no. 10 was allotted to him. He was given identity card. On the basis of which, he had gone to the said table at about 7.30 A.M. At his table, agents of other parties were also present but how many agents were there, he cannot tell because he did not know them from before. During counting, he never went to other tables leaving his own. He does not recollect as to of how many booths, the counting was being held at his table. He had gone alone at the place of counting and during counting, his candidate was winning or loosing, he

does not recollect nor does he recollect whether he had noted it on any paper. The counting had started at 8.30 A.M. and continued till 3.30 p.m. He remained present outside the counting premises for two hours after closing of the counting. When it was asked as to counting of votes cast at how many booths, was held at his table, he replied that he had gone out, therefore, he cannot give reply. He had also failed to tell as to what announcement was being made in between. Later on, he stated that it was being announced as to who got how many votes. It is further stated by him that his counsel had prepared his affidavit on the basis of his statement made to his counsel in Hindi. He does not know English. Hence whatever was written in affidavit, might have been correctly written. At the time of counting, he had not gone to the strong room. The thread used to put seal on the EVMs, was found broken and on that basis, he had stated that the seal of the same was found broken. He does not recollect whether other agents had also made any complaint or not regarding seal being found broken. He was not present between 10th to 17th round of counting at his table because he was thrown out by the Returning Officer after having been given threat by the police, but others were not thrown out. Thereafter, he has said that there were many people on the table. When he and other agents told that seals of EVMs were found broken, the Returning Officer had got him thrown out by the police. At his table, at 10th round of counting, only one EVM was counted and when the said machine was brought there, he was present. The votes which were appearing on the display of EVM, some of them were noted by him and then he could not note because of him having been thrown out. He could not note the entire figures. When complaint was made regarding seals being found broken to the Returning Officer, the Returning Officer called the police and he was thrown out of the counting centre. He went to the petitioner after being thrown out of the counting centre. He had made a complaint to the Returning Officer, in writing, but its receiving is not with him. When the Returning Officer came at his table during counting, he had complained that the seal of the EVMs was found broken. He had made complaint on a plain paper in writing, specifically mentioning therein that the seals of the EVMs were found broken therefore the same should be got investigated and the counting be got done of VVPAT slips. He does not recollect in which round the said complaint was made. In between 18th round of counting, he had reached at his table and during the said counting, how many votes were cast, he did not note. When he made a complaint about it to the petitioner, she talked to higher authorities and thereafter only he was allowed to go to the place of counting in between 18th round. At his table, the counting was done of 28th round however between 10th to 17th round, he remained with the petitioner but during this period the other counting agents, who were on the other tables, stayed there and some of them might have not remained there. After completion of the counting, he went out of the place of counting. When it was put to him as to whether he was present when the petitioner had made a complaint to the Returning Officer, he stated that he was at his table and it was told by the petitioner that she was going to make a complaint to the Returning Officer, in writing. He does not recollect as to whether he met the petitioner after coming out of the counting premises. After completion of 28th round of counting, he had met the petitioner and after about 1½ to 2.00 hours, he received information that the petitioner had lost the election.

42. Submission made by the learned counsel for the respondent relating this statement is that his statement does not inspire confidence because he is giving discrepant statement as regards the timing of the counting because this witness has stated the counting to have been done between 8.00 A.M. to 3.30 P.M. while the PW-1 has stated that the counting started at 8.00 A.M. and concluded at 5.00 A.M.. Narration of the seal having been found broken also does not inspire confidence because he has stated that he was saying so because of the thread being found broken which was tied around the EVMs. This witness has stated the place of counting to be Mati Cricket Stadium while the other witnesses, whose statements have been dealt with above, have stated that the counting happened at Akbarpur Mandi

Samiti, therefore, it appears that he is stating only on the basis of conjectures and was not present on the place where counting was taking place.

43. Mohd. Imran who has been examined as PW-7, has stated in crossexamination that he had reached the place of counting and had seen the EVMs prior to beginning of the voting and was satisfied with the EVMs. The EVM mock poll had also been done prior to the counting. At the booth of his candidate/petitioner, he was the single agent. Because of being local, he knew most of the voters and only on the suspicion, he used to ask for voter I.D. In his knowledge, the voters who were coming to cast their vote, were right persons. He knows the names of only three candidates but he cannot tell about the total number of candidates. Further, it is stated that it is correct to say that prior to beginning of polling till the EVMs having been sealed, he remained present at the said place. At his polling booth, voting happened in appropriate manner. No complaint of any type was made by him. He knows polling agents but their names he does not know, although he was of their village. The voting was closed at 5.00 p.m. There was no such index which included the name of all the voters. He did not have voter list in order to verify the bogus voter because he knew most of them, being local person. For becoming a booth agent, one form is required to be filled up which was taken by him from the Presiding Officer. He was present at the time of EVMs being sealed and besides him there were also agents of other parties. Four agents were present. He cannot tell as to when polling party had returned. During the polling, neither the petitioner nor Virendra Sharma came there. When polling party went away from the booth, he had gone to Virendra Sharma. He cannot tell as to how many votes were cast at his booth. He had not objected to any voter casting his vote at his booth. Total 498 votes had been cast at his booth, which was told to him by the Presiding Officer orally but had not noted the number. No difficulty was felt at the time when EVMs were sealed as they were sealed properly. Further, it is stated that the Presiding Officer had obtained his signature on one paper but what was written thereon he cannot tell as he had not read it. A small piece of paper was given to him on which he had signed thereafter it was tied with thread in the EVMs.
44. After having drawn attention to the statement of this witness, it is argued by the learned counsel for the respondent that this witness has clearly stated that he had remained present on the place where polling happened and till the time EVMs had been sealed. He did not note any mischief at the time when the EVMs were sealed after the polling was concluded and this witness has given truthful statement which blasts the case of the petitioner that there was any bungling in the election process.
45. With regard to the same issue, from the side of the respondent, DW-1, Deepali Bhargav (Kaushik) has been examined, who was the Returning Officer of the constituency in question. She has stated in examination-in-chief that one hand book for Returning Officer was issued by the Election Commission for this election, which she had studied and also had studied the circulars/orders issued by the Election Commission from time to time. Election in question was held without any bias or undue favour to any candidate. Counting was decided to be held at Mati Headquarter in a Stadium. Prior to the starting of counting of votes, all the candidates and their agents were given information regarding opening of the strong room. The said room was got opened by her in the presence of all the candidates present along with agents and video recording of the same was also got done as the same was essential under the Rules. Prior to the start of counting, she had ensured that no seal of either strong room or any EVM's container was broken. During the entire election process, no complaint from any candidate or his agent was made in this regard. After having perused the paper no. A-23/1 and A-24/1, she stated that the said paper was presented before her by the petitioner Seema Sachan whereon she had passed order. Paper No. A-17/1 is a carbon copy of the application moved by Mahendra S/o Sambhu (not readable), whereon a seal of Returning Officer 207, Kanpur Dehat, Sikandara, Vidhansabha, is affixed on which her initial (short signature) is not made. The said application was never presented before her. paper No.

A-18/1 is a carbon copy of the application moved by Ram Naresh S/o Raja Ram on which there is seal of Returning Officer 207, Sikandara, Kanpur Dehat on which too, there is no initial made by her. The said application was never presented before her. Paper No. A-19/1 is a carbon copy of the application moved by Anoop Kumar S/o Ujagarlal, which too has seal of Returning Officer, 2007, Sikandara, Kanpur Dehat which also does not carry her initial nor the said application was ever presented before her. A-20/1 is a carbon copy of the application given by Arvindra S/o Lt. Shivadhar, bearing seal of Returning Officer, 207 Sikandara, Kanpur Dehat which also does not bear her signature nor the same was ever presented before her. During the entire counting process, neither any counting supervisor nor counting assistant had made any complaint to her. After the counting was over, two applications were moved by the petitioner Seema Sachan. In paragraph no. 20 of the petition, it has been mentioned that she had deliberately made favour of B.J.P. candidate by indulging in manipulations.

46. The said witness has been cross-examined by the learned counsel for the petitioner in which she has stated that in this by-election, how many candidates had filled up nomination, she does not have knowledge as the same cannot be disclosed by her without perusal of the record nor does she recollect the date of election. She was also put a question on how many booths, election was held in this by-election, to which she responded that these factual questions cannot be replied without perusal of record. Similar was the statement given by her stating that how many votes were cast, she could not reveal without perusal of the record and did say that she knew all the directions issued regarding conducting the election proceedings. Then she was put a question as to what is the Form 17-C to which she responded that without perusal of the record she would not be able to give answer to that question. Then she said that it is correct to say that at each booth, how many votes were polled, in this regard, Presiding Officer had disclosed to the agents. The said information is always given orally which is noted down by the agents and on her own, she has further stated that after closure of the polling, Presiding Officer sent a written information as to how many votes were polled in the election, to the Election Office, in writing and the information regarding total votes polled was also given to the agents of the candidates orally. Polling was held on 24.12.2017 and for counting 14 tables were set up and a separate table known as Zero table was also set up and at this counting table also, similar procedure was adopted. At each table where counting is held, one agent is permitted to remain present and further stated that one candidate, at the most, can nominate 14 agents or even less than that. At zero table candidates themselves go, not their agents. There was no separate pass required for approaching zero table and at that table, the postal ballots are counted. Further it was put to her as to, during counting, at each booth, how many votes were received by each candidate and the ultimate calculation regarding this is done where, to which it was responded by her that in the counting hall, after every round, at a board, the figure is noted and mic is also used for announcement about the number of votes cast and the said number is also got noted at each table to the agents of the candidates. The EVMs were kept in strong room comprising two rooms. Strong room was got opened at about 8:00 AM. The written information regarding opening the same, was sent to candidates as well their agents. There is no announcement required to be made from the strong room and on her own she has stated that whosoever remains present in the premises, is called there and videography is also got done of the said proceedings. Strong room is adjacent to the place of counting as the place of counting is visible from the strong room. At few polling stations EVMs had gone out of order which were about less than one percent. At the time of polling, for the help of Returning Officer, two Assistant ARO are also deputed and they also have their own separate clerical staff present at the place. There is no definite assignment given to the ARO. They are always issued instructions from time to time and they comply with the instructions of the Returning Officer at the place of counting. Thereafter the question was put to her whether at the time of counting, officials involved in counting also make compliance of the orders issued by the Returning Officer apart from their Assistant Returning Officer also, to which it was

replied that no work can be performed by the ARO without the same having been brought to the knowledge of the Returning Officer. Further she has stated that during counting whatever written complaints are made by the agents, they are kept on record.

47. On the file, paper no. A-17/1, A-18/1, A-19/1 and A-20/1 bear signature and seal but whose signature or seal are there, she cannot tell. She recognizes only her own signature. When it was put to her whether the said signature could be of ARO, she denied any knowledge about that. She stated that all these four applications were taken by her ARO or not, she could not give any information about this. Counting had been closed between 4:00 and 5:00 PM and does not recollect as to for how many rounds, counting was done. After closure of the counting within 15-20 minutes thereof, result was declared. After closure of the counting and before declaration of the result, no pressure of any kind was exerted upon her by anyone. Further she was put a question as to why paper No. A35 22/1, which is application addressed to District Election Officer/Chief Election Officer, U.P., was disposed of by her, she replied that any complaint with respect to constituency falling in the jurisdiction of the Returning Officer, the same are supposed to be disposed of by the Returning Officer only, because of that reason, she had disposed of that complaint also. A carbon copy of Paper No. A-20/1 and A-21/1 were not received by her. There was no endorsement made by her on Paper No. A- 21/1 but she cannot give any information with regard to the fact as to who had received the said application. Whether it was received by her Assistant or not, she cannot tell. At paper No. A-20/1 and A-21/1, the seal which they bear, the similar seal is brought in use by her. Further she has stated that during counting process, no complaint regarding seals of EVMs having been found broken was made by any agent and stated on her own that an oral prayer was made for counting of the VVPAT slips for the purposes of tallying the result. Whatever oral prayer was made in this regard, the same was allowed. The comparison was made after counting done with VVPAT slips. It cannot be stated by her without perusing the record as to during which count, such kind of complaint and prayer was made for comparison of the result with VVPAT slips. She also does not recollect as to whether comparison with VVPAT slips was done after the closure of the counting or prior to that. As per the rule, comparison with VVPAT slips is done only after concluding of the counting, provided some prayer is made in that regard. As per the Rules issued by the Election Commission, comparison with VVPAT slips is not mandatory. Initially there was permission for comparison with VVPAT slips only at one booth but presently it can be done up to at 5 booths. Thereafter she was put a question as to, during polling, at how many booths, she had got the result compared with VVPAT slips, she replied that during counting, comparison was made in respect of only one booth with VVPAT slips which was in consonance with the then prevalent Rules. She had done comparison with VVPAT slips at the instance of Seema Sachan/petitioner for which the petitioner had made oral prayer. She cannot tell without seeing record as to during which round this prayer was made. Prayer was made only with respect to comparison of only one booth and not for every booth. When it was put to her as to whether petitioner and her agents had made complaint after tenth round that the seals of the EVMs were found broken, it was replied that no such complaint was ever made. It is further stated by her that from 10th to 17th round, agents of the petitioner were present on the place of counting and at the end of each round of counting, the agents were getting their satisfaction recorded and the agents of the petitioner had also got their satisfactions recorded in writing. The agents of Seema Sachan were present all along the counting process. The winning candidate Ajeet Pal Singh had moved no complaint at any stage. Further she stated that there is guideline issued in RO handbook regarding comparison with VVPAT slips and as per the said guidelines, the resolution of the complaint was done with respect to comparison with VVPAT slips in this case. She was Returning Officer in 2017. Earlier at Chaprauli, Vidhansabha, Baghpat, she had earned award of best Returning Officer but she further stated that she does not recollect as to what was the rule contained in RO handbook regarding comparison with VVPAT slips. Next she has stated that at about 8:00 pm, when the strong

room was opened and the counting had been started, the same continued up to between 4:00 PM to 5 PM. She cannot disclose exact time when the counting began. Then she was put a question as to after having taken to how much distance from the strong room, counting had been started from EVMs, she replied that strong room was about 15 meters away from the place, where counting was being done and continuously machines were being brought from the strong room and throughout the counting period, she remained present. During the counting, election observer was also present and apart from him, D.M. and A.D.M. and other Magistrates kept coming and going. No one was allowed permission to enter into the counting center. She has appeared today at the summons received from Court. She is not giving statement from the side of the winning candidate Ajeet Pal nor was she ever asked by him to depose before court. It was wrong to say that in order to give benefit to the winning candidate and his father, she has given statement before this Court today and has misused her post and it is also wrong to say that she has not done comparison at any booth with VVPAT slips.

48. After having drawn attention to this statement, it is argued by the learned counsel for the respondent no. 1 that this witness has very clearly stated that no complaint was made ever by any of the agents of the petitioner with respect to any mischief during the counting process. All the applications A-17/1 to A-20/1, allegedly moved by Mahesh, Ram Naresh and Anoop Kumar and Arvindra have been denied to have been received by her. She has also denied her initial to be there on any of these applications which have been produced from the side of the petitioner. She has gone to the extent of saying that the purity of the election was maintained as at the time when the strong room was being opened, prior information was given to all the candidates and their agents to remain present and videography was also done of the process.
49. From the side of the learned counsel for the petitioner, it is vehemently argued that seven witnesses have been examined from the side of the petitioner who prove that complaints were made from their side to the Returning Officer but she has given wrong replies that no such complaint was made and has deliberately refused to have her signatures on those complaints. This is being done deliberately. A perusal of her admitted signature and disputed signature would indicate that the said initials which she is denying before this court, were actually hers and deliberately she has not acted upon those complaints in order to reach benefit to the respondent no. 1 because she was under influence of respondent no. 1 and she has misused her position. Several replies which she has given, are indicative of fact that she is evasive in giving clear replies and at most of the times, she has given replies that she cannot not give reply to the question put unless she is allowed to peruse the record. So much so that even regarding important Form 17-C, she has stated that she does not know as to what does it mean. Such an Officer who is claiming to have been awarded, award of best Returning Officer, it is unbelievable that she would not know as to what does Form 17-C mean and entire evidence has been given only with a view to benefiting the respondent no. 1 and the same should be discarded and the statements made by PW-1 to PW-7 should be believed and on that basis the court should arrive on a conclusion that petitioner has been able to prove Issue No. 1 that seals of EVMs' were found tampered with and broken which has been averred in paragraph no. 10.
50. This Court is not in agreement with the view of the learned counsel for the petitioner because it has in detail analyzed the statement of PW-1 to PW-7 examined from the side of the petitioner and on that basis, this Court comes to the conclusion that merely because seven witnesses are saying that they had made complaints before the Returning Officer which were ignored, it cannot be held proved because none of the witnesses has been able to prove that they had any receiving of the complaints made by them and the signatures which are being stated of the Returning Officer, the said officer by appearing before this Court has clearly denied as hers and she has emphatically stated that no such complaints were received, therefore, this Court is of the view that the petitioner has failed to prove the said issue

and, accordingly, the said issued is decided in negative holding that seals of EVMs were not found tampered with or broken as stated in paragraph no. 10.

Finding on Issue no. 2.

51. As per this issue, this Court has to decide as to whether provisions of Sections 64 and 66 of the Act and Rule 49S, 55C, 56C, 56D and 66A of the Rules of 1961 have been violated? if yes, its effect.
52. Submission made by the learned counsel for the petitioner is that Returning Officer has acted against the mandatory provisions of the Act provided under Sections 64, 66 and also of the Rules 49S, 55C, 56C, 56D and 56-d and 66-A. The election of the returned candidate has also been materially affected on account of improper reception of votes of the Electronic Voting Machines, seals of which were found tampered or broken at the time of counting. The election of returned candidate has also been materially affected on account of the Presiding Officer not having given true copy of the entries made in Form 17-C obtaining receipt thereof from the polling agents at the close of the polling. The election is also materially affected of the returned candidate on the ground of fact that after completion of the counting and after entries made in the result sheet, result was announced but before the signatures of the Returning Officer on the result-sheet, election petitioner had made an application in writing complaining about the tampered and broken seals of EVMs of several polling booths during counting. The election of the returned candidate has been materially affected on account of the fact that EVMs were manipulated to benefit the returned candidate and in spite of the objection raised, the Returning Officer has illegally counted votes of tampered EVMs of booth no. 135 of table no. 4 in the 11th round of counting and has given benefit to the returned candidate/respondent no. 1. It is further argued that election of returned candidate has been materially affected on account of the fact that provisions of Constitution, Act and Rules framed thereunder as well as orders and instructions issued under the Constitution by the Election Commission of India, have not been complied with in counting of votes. Attention was also drawn by the learned counsel for the petitioner that while deciding the application under Order VII Rule 11 of CPC, wherein prayer was made for rejection of the plaint on the ground of insufficient material facts, the same was disposed of vide order dated 12.4.2019 wherein following was observed by this Court :

"I find that the said description would be sufficient to be taken to be cause of action which has arisen to the petitioner to file this petition and this Court does not find any substance in the argument of the learned counsel for the respondent no.1 that no cause of action and sufficient details have been given by the petitioner because of which the application under Order VII Rule 11 deserves to be allowed It was also pointed out by the learned counsel for the petitioner that Schedule-I attached to the petition contains list of all the documents which are found by the petitioner to be necessary for disposal of this petition and rest of the evidence which may be thought proper to be brought on record, would be adduced in course of the proceedings, which is not barred under law. I am also convinced by the argument made by the learned counsel for the petitioner that she has given all the documents which are found by her to be in support of her case."

53. Therefore, it is apparent that this Court has held that there was sufficient material and the cause of action stood established and therefore this matter cannot be raised again. It is further clarified by the learned counsel for the petitioner that sufficient material is available on record in accordance with the requirement of Section 83, Section 100(1)(d)(iii) and (iv) of the Act and that the petitioner was not claiming the relief in the present petition on the ground of corrupt practice as contemplated under Section 123 of the Act. It is further argued that due to non-compliance of the Rule 49S and 56C(2) read with Form 17C, declaration of the result has been materially affected, rather could not have been prepared and, therefore, non-compliance of Form 17C results automatically in declaration of the result to be void. It is further argued that seal of large number of EVMs were found tampered and broken and

in spite of oral and written objections and request, issue was not addressed by the Returning Officer and the votes were counted of these machines wrongly in contravention of Rule 55C, 58 and 64A. There was sufficient material on record to show that Returning Officer failed to discharge his duty in accordance with the Section 64 of the Act as ultimately it was responsibility of the Returning Officer in the matter of counting of votes and consequent declaration of result which was carried out under her supervision. It is further argued that Returning Officer was biased, prejudicial, partial and unfair from the very beginning and to establish that it has been pointed out that when a question was put to her during her cross-examination about Form 17C, she pleaded ignorance. Further in Paper No. A-24/1, there was an order dated 24.12.2017 in which she stated that during the counting of round no. 11, at table no. 4, booth no. 135, she got it opened and counting of VVPAT slips was made. It is illegal to count the VVPAT slips in the mid of counting. She being an experienced Officer, she should not have done so. Moreover, she has stated that she was well acquainted and aware of Rules. Further it is argued that under Rules 56D which relates to scrutiny of papers, the opening and counting of VVPAT can only be done after completion of all the rounds, at the end of the counting and that too, on a written complaint made by an agent or the candidate and after passing of order by Returning Officer in writing giving reasons for its opening. The mere look at the order dated 24.12.2017 would show that relevant rules of counting have not been followed as in the middle of counting, VVPAT machine was opened illegally as the Returning Officer has admitted in cross-examination that it was opened on oral request. It is further argued that in **Virender Nath Gautam Vs. Satpal Singh and Ors., 2007(3)SCC 617**, which pertains to election petition, it has been laid down that election petition must contain a concise statements of "material facts" on which the petitioner relies. All the "material facts", therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If "material facts" are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by Section 83(1)(a) of the Act read with clause (a) of Order VII Rule 11 CPC. What facts would be said to be "material facts" would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which need to be proved at the trial by the party to establish existence of cause of action or defence are "material facts" and must be stated in the pleading by the party. There is distinction between *facta Probanda* (facts required to be proved i.e. material facts) and *facta probentia* (facts by means of which they are proved i.e. particulars or evidence). It is settled law that pleadings must contain only *facta probanda* and not *facta probentia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probentia* (particulars or evidence) need not be set out in the pleadings. They are not facts in issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.

54. In the light of above position of law, all the relevant facts in the present case have been mentioned. It is argued that it is evident from the evidence and pleadings that there is total non-compliance of requirement of Rule 49S "Accounts of Votes Recorded". Form 17C is most important document for compliance of Rule 49S and 56C (counting of votes) in the recording of votes.
55. For the sake of convenience Rule 49S is being quoted herein below:

"49S. Account of votes recorded.—(1) *The presiding officer shall at the close of the poll prepare an account of votes recorded in Form 17C and enclose it in a separate cover with the words 'Account of Votes Recorded' superscribed thereon.*

(2) *The presiding officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in Form 17C after obtaining a receipt from the said polling agent therefor and shall attest it as a true copy. "*

56. For the sake of convenience Form 17-C is being quoted herein below:

"Election to House of the People/Legislative Assembly of the State/Union territory.....from.....Constituency.

Number and Name of Polling Station

Identification Number of Voting

Control Unit.....

Machine used at the Polling Station

balloting Unit.....

Printer (if used).....

1. Total number of electors assigned to the Polling Station

2. Total number of voters as entered in the Register for Voters (Form 17A)

3. Number of voters deciding not to record votes under rule 49-O

4. Number of voters not allowed to vote under rule 49M

5. Test votes recorded under rule 49-MA (d) required to be deducted-

(a) total number of test votes

to be deducted:

Total No.

SI. No. (s) of elector (s) in Form 17A

.....

.....

(b) candidate(s) for whom

S.I. No.

Name of candidate

No. of votes

test vote (s) cast:

.....

.....

.....

.....

.....

.....

6. Total number of votes recorded as per voting machine:.....

7. Whether the total number of votes as shown against item 6 tallies with the total number of voters as shown against item 2 minus numbers of voters deciding not to record votes as against item 3 minus number of votes as against item 4 (i.e. 2-3-4) or any discrepancy noticed:.....

8. Number of voters to whom tendered ballot papers were issued under rule 49P.:.....

9. Number of tendered ballot papers.

S.I. No.

Total

Form To

(a) received for use.....

(b) issued to electors.....

(c) not used and returned.....

10. Account of papers seals

.....
Signature of Polling agents

1. Paper seals supplied for use

Total No.....

1.....

S.I. No. from.....

to.....

2. Paper seals used:

Total No.....

2.....

S.I. No. (s).....

3. Unused paper seals returned to Returning Officer

Total No.....

3.....

S.I. No. (s).....

4. Damage paper seal, if any:

Total No.....

4.....

S.I. No. (s)

5.....

6.....

Date.....

Place.....

.....
Signature of Presiding

Officer

Polling Station No....

No.....

Part-II

Result of Counting

Sl. No. of candidate	Name of Candidate	Number of votes as displayed on control unit	Number of test votes to be deducted as per item 5 of part I	Number of valid votes (3-4)
1	2	3	4	5

1.

2.

3.

4.

5.

6.

Total

Whether the total number of votes shown above tallies with the total number of votes shown against item 6 of Part I or any discrepancy noticed between the two totals.

Place

Date.....

.....

Signature of Counting Supervisor

Full signature

Name of Candidate/election agent/counting agent

1.

2.

3.

4.

5.

6.

7.

Place.....

Date.....

.....

Signature of Returning Officer

57. For the sake of convenience Section 66-A is being quoted herein below :

"66A. Counting of votes where electronic voting machines have been used.—Inrelation to the counting of votes at a polling station, where voting machine has been used,—

(i) the provisions of rules 50 to 54 and in lieu of rules 55, 56 and 57, the following rules shall respectively apply, namely:—

'55C. Scrutiny and inspection of voting machines.—(1) The Returning officer may have the control units of the voting machines used at more than one polling station taken up for scrutiny and inspection and votes recorded in such units counted simultaneously.

(2) Before the votes recorded in any control unit of voting machine are counted under sub-rule (1), the candidate or his election agent or his counting agent present at the counting table shall be allowed to inspect the paper seal and such other vital seals as might have been affixed on the unit and to satisfy themselves that the seals are intact.

(3) The Returning officer shall satisfy himself that none of the voting machines has in fact been tampered with.

(4) If the Returning officer is satisfied that any voting machine has in fact been tampered with, he shall not count the votes recorded in that machine and shall follow the procedure laid down in section 58, or section 58A or section 64A, as may be applicable in respect of the polling station or stations where that machine was used.

56C. Counting of votes.—(1) After the Returning officer is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked "Result" provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit.

(2) As the votes polled by each candidate are displayed on the control unit, the Returning officer shall have,—

(a) the number of such votes recorded separately in respect of each candidate in Part II on Form 17C;

(b) Part II of Form 17C completed in other respects and signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and

(c) corresponding entries made in a result sheet in Form 20 and the particulars so entered in the result sheet announced.

56D. Scrutiny of paper trial.—(1) Where printer for paper trial is used, after the entries made in the result sheet are announced, any candidate, or in his absence, his election agent or any of his counting agents may apply in writing to the Returning Officer to count the printed paper slips in the drop box of the printer in respect of any polling station or polling stations.

(2) On such application being made, the Returning officer shall, subject to such general or special guidelines, as may be issued by the Election Commission, decide the matter and may if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning officer under subrule (2) shall be in writing and shall contain the reasons therefor.

(4) If the Returning officer decides under sub-rule (2) to allow counting of the paper slips either wholly or in part or parts, he shall—

(a) do the counting in the manner as may be directed by the Election Commission;

(b) If there is discrepancy between the votes displayed on the control unit and the counting of the paper slips, amend the result sheet in Form 20 as per the paper slips count;

(c) announce the amendments so made by him; and

(d) complete and sign the result sheet.

57C. Sealing of voting machines.—(1) After the result of voting recorded in a control unit has been ascertained candidate-wise and entered in Part II of Form 17C and Form 20 under rule 56C, the Returning officer shall reseal the unit with his seal and the seals of such of the candidates or their election agents present who may desire to affix the seals thereon so however that the result of voting recorded in the unit is not obliterated and the unit retains the memory of such result.

(2) The control unit so sealed shall be kept in specially prepared boxes on which the Returning officer shall record the following particulars, namely:—

(a) the name of the constituency;

(b) the particulars of polling station or stations

where the control unit has been used;

(c) serial number of the control unit;

(d) date of poll; and

(e) date of counting.;

(ii) the provisions of rules 60 to 66 shall, so far as may be, apply in relation to voting by voting machine and any reference in those rules to,—

(a) ballot paper shall be construed as including a reference to such voting machine;

(b) any rule shall be construed as a reference to the corresponding rule in Chapter II of Part IV or, as the case may be, to rule 55C or 56C or 57C. "

58. Having cited above provisions of law, it is argued that Form 17-C and Rule 49S and 66-A are foundation stone of the voting accounts. Even a small mistake in Form 17C will vitiate the election result which would be evident from a mere look at it. It is method of check and cross check of votes. Form 17C is the only document which deals with the votes polled and counted. If there is any mistake in the said form, votes cannot be recorded. Form 17C has been brought through Rule 49S and 56C(2) of the Rules. The said Form 17C (supra) would show that there are many details required to be filled up and then they have to be tallied.

59. In the case in hand, there is total non compliance of Form 17C because as per Rule 49S, Presiding Officer at the close of poll, shall prepare an account of votes recorded in Form 17C and enclose it in a separate cover and a true copy of the entries made in Form 17C shall be furnished to every polling agent at the close of the poll and a receipt thereof shall be obtained from the said polling agent. A copy of the said Form 17C has not been provided to any of the polling agents nor receipts thereof has been obtained, hence it would be treated that there was complete non compliance of the said provision of Form 17-C and it was also argued vehemently that even if it has not been averred in the pleadings that the Form 17C was never prepared, it would be deemed that since a copy of the same has not been provided to any of the polling agents, therefore, the same was never prepared and, therefore, election result would stand vitiated. It was also argued that if it was stated by the petitioner in the petition that copy of Form 17C was not provided, the burden would be shifted upon the respondent to prove that the same was prepared and a copy of the same was provided for which reliance has been placed on **Sushil Kumar Vs. Rakesh Kumar, (2003) 8 SCC 673**, in which, it was held that initial burden of proof that nomination paper of an elected candidate had wrongly been accepted as he was disqualified on the date of nomination, is on election petitioner. However, question as to whether the burden to prove a particular matter is on the plaintiff or the defendant would depend upon the nature of the dispute. In

relation to certain matters, the fact being within the special knowledge of the respondent, the burden to prove the same would be on him in terms of Section 106 of the Indian Evidence Act and after having heavily relied upon this ruling, it is argued that once it has been alleged by the petitioner that the polling agents were not provided copy of Form 17C, thereafter the burden would shift upon the respondent to prove by adducing evidence that the said form was in fact prepared and copy of the same was provided to the petitioner's agents, thereafter, it was further argued that once it is proved that compliance of Rule 49S which made providing copy of Form 17C mandatory to be given to the polling agents at the time of closure of counting is violated, the election of the winning candidate shall stand vitiated as the same was a mandatory provision.

60. Petitioner's counsel has also drawn attention to the reply of averment made in paragraph no. 7(c) and paragraph no. 9, wherein it is averred that returned candidate's election had been materially affected on account of the fact that Presiding Officer did not give true copy of the entries made in Form-17C after obtaining a receipt thereof from the polling agents at the close of the counting, reply of which was given in paragraph no. 26 of written statements saying therein that contents of paragraph no. 9 of the petition are erroneous and hence denied and, therefore, it is argued that the same is evasive reply which would amount to accepting the version given by the petitioner in the above paragraph in view of the law laid down in Sushil Kumar's case (supra). Paragraph nos. 71 to 73 of the said judgment are as follows:-

"71. In paragraph 15 of the written statement, the respondent has not specifically contended that the statements made in paragraph 18 of the election petition are incorrect or how they are so. Merely the said allegations have been denied as being imagination of the election petitioner without making a statement of fact that Rohit Kumar is not the elder brother of the respondent or is in fact younger to him. Such an evasive denial attracts Order VIII, Rule 5 of the Code of Civil Procedure. The statements made in paragraph 18 of the election petition must, therefore, be deemed to have been admitted. The Birla Institute of Technology, Mesra, has produced the Application for Under-graduate Admission for Rohit Kumar, wherein his date of birth has been shown as 1.3.1979. Even in the inquiry made by the Chief Electoral Officer, the respondent had not specifically denied the said fact. The Governor of the State of Bihar in his order (Ext.4) observed :

"Sri Rakesh Kumar has not denied that his elder brother is a student of Birla Institute of Technology. Documents furnished by Birla Institute of Technology about the age of his elder brother are extremely significant and relevant to determine Shri Rakesh Kumar's likely age. The documents furnished by the Institute reveal that the date of birth of the elder brother of Sri Rakesh Kumar is 1.3.1979. Hence, on 19.5.1999 Sri Rakesh Kumar's elder brother was 20 years, 2 months and 18 days old. So, it can be safely and conclusively assumed that on 19.5.1999 Sri Rakesh Kumar, when he was sworn in as a minister, was less than 20 years, and definitely much less than 25 years, the qualifying age to become a member of the State Legislative Assembly."

72. The High Court, on the other hand, observed : "...It is true that it has not been specifically stated in the reply to paragraph 18 of the election petition that Rajesh Kumar happens to be younger brother of Rakesh Kumar but making him an elder brother has been totally denied. In that way, it cannot be said that only evasive reply is there and when this fact could not be proved by any cogent evidence from the side of the election petitioner that Rajesh Kumar happens to be the elder brother of the respondent Rakesh Kumar, rather when contrary evidence is there from the side of the respondent then the age group of Rohit Kumar @ Rajesh Kumar does not come in aid to the election petitioner to prove the underage of Rakesh Kumar the respondent."

73. In our opinion, the approach of the High Court was not correct. It failed to apply the legal principles as contained in Order VIII, Rules 3 and 5 of the Code of Civil Procedure. The High Court had also not analyzed the evidences adduced on behalf of the appellant in this behalf in details but

merely rejected the same summarily stating that the vague statements had been made by some witnesses. Once it is held that the statements made in paragraph 18 of the election petition have not been specifically denied or disputed in the written statement, the allegations made therein would be deemed to have been admitted, and, thus, no evidence contrary thereto or inconsistent therewith could have been permitted to be laid."

61. Learned counsel for the petitioner has further drawn attention to the statements of PW-1 Seema Sachan, PW-5 Virendra Kumar and PW-7 Imran, Polling Agents and that of DW-1, Deepali Bhargawa (Kaushik), the Returning Officer and has specifically pointed out the question put to the DW-1 as to what is Form 17C, to which she had replied that the same is a factual question which cannot be answered without looking at the record. Her statement has also been pointed out wherein she has stated that at each booth how many votes were cast, in this regard the Presiding Officer used to tell to the agents orally and the agents used to note it down. Thereafter she further stated on her own that after closure of the election how many votes were cast, information regarding that was sent in writing to the Election Office. The number of votes cast in this election, information regarding it was given to the agents by Presiding Officer orally and then she was again put a question as to how many votes were got by each candidate at each booth during counting and where the final counting was made, reply was given by her that after each round of counting, the result of the counting was written at the Board and was also announced by mic and was also got noted to agents and candidates of each table.
62. Having drawn attention to these pieces of evidence, it is argued that reply of the Returning Officer is very evasive which would go against returned candidate as the Returning Officer has not made it clear as to whether the Form 17-C which contains the votes cast and other details of each round was actually prepared or not.
63. Reliance has also been placed by the learned counsel for the petitioner on ***Arabinda Dhali Vs. Nimai Chandra Sarkar and Ors., AIR 2008 (NOC) 2561 (ORI.)***, which relates to discrepancy in votes polled and votes counted vis-a-vis maintenance of Form No.17C prescribed under the conduct of the Elections Rules, 1961 and it was held that filling up of the said form is mandatory requirement under Rules 49S and 56 of 1961 Rules and, therefore, non compliance of the said requirement would affect the result of the election and that the such infirmities in the election process would fall within the infirmities specified under Section 100(1)(d) (iv) and in such a case election can be declared void.
64. In the light of above law, it was argued that in the present case, it is admitted position of fact that Form 17C was not filled up, therefore, present election of the returned candidate should be declared null and void.
65. Next he has placed reliance on ***S. Prasanna Kumar Vs. Dr. Y. Nagappa and Others, IIR 2007 KAR 4491***. It was argued that in this case the Karnataka High Court found that Form 17C was not available in respect of certain polling stations and the Returning Officer does not manage the record properly which was mandatory duty under the Act and Rules, it was found that there was something fishy and election was found to be illegal because of there being some collusion of the R.O. with the winning candidate and the same was not allowed to be sustained and Disciplinary Authority was directed to make entry in service record of the Returning Officer regarding lack of honesty and integrity.
66. Attention is also drawn by the learned counsel for the petitioner to Rule 55C(4) which has been cited above, which states that in the event of tampering of EVMs, Returning Officer has no option but to follow the command of Section 58, 58A and 64A of the Act which deal with the fresh votes as the result of polling station cannot be ascertained and matter should also be reported to the Election Commissioner by the Returning Officer.

67. It is further argued that all the six witnesses of petitioner have reiterated about broken seals of the EVMs which fact was also brought on record through complaint in writing made to Returning Officer during counting by the counting agents but no heed was paid which clearly proves that EVMs had broken seals and the complaint was mechanically rejected by the Returning Officer. It is further argued that paper no. A- 24/1 is an application signed by the petitioner on 24.12.2017 addressed to RO for recount of votes on the issue of broken seal of EVMs and the R.O. passed order dated 14.12.2017 observing that no agent had objected that EVMs' seals were found broken and that in the 11th round, objection was raised by the agents and on rechecking, there was no difference found in the result of the control unit and the result of VVPAT slips. There is statement of Seema Sachan that on 24.12.2017, an application Vide Paper No. A/24-1 signed by her was given stating that the seals of EVMs were found broken in the 11th round of counting. R.O. has admitted in her statement that in the presence of agents, VVPAT slips were got checked and result was found similar, which is also on record as paper no. A- 24/1, which is an application of Seema Sachan dated 24.12.2017 and that under existing Rules R.O. had no power to recount VVPAT during counting on oral request. The same can be done after completion of the round of counting on written request by passing an order in writing by R.O. The justification given by Returning Officer for rejecting the application, is false and after having drawn attention to all this, it is argued that this is a classic case wherein averments of the petitioner have not been denied, rather evasive replies have been given. In fact important facts have not been controverted, therefore, they stand proved. It is also an important fact that winning candidate has not appeared before the court and has not denied the allegations and only one witness has been produced i.e. R.O. who too has not given a single documentary evidence. In view of this, the stand of the petitioner should be accepted and the election of the returned candidate should be set aside.
68. When the arguments were nearing completion, from the side of the petitioner it was vehemently stressed that he would like to press solely on the ground of non-compliance of the provisions of Rule 49S of the Rules of 1961 which mandates that copy of the Form 17C would be provided to the polling agents and receipt thereof shall be obtained by Presiding Officer, therefore, in the present case, in view of its default, election of the respondent no. 1 stands vitiated and other grounds he would not like to press much.
69. Learned counsel for the petitioner has relied upon **R.M. Seshadri Vs. G. Vasantha Pai, 1969 (1) SCC 27**, which relates to summoning of a witness by court. Relevant paragraph of the said judgment is quoted herein below:-

“The power of a Civil Court to summon court witnesses is contained in Order XVI Rule 14 of the Code of Civil Procedure. Now the representation of People Act enjoins that all the powers under the Code can be exercised and all the procedure as far as may be, applicable to the trial of civil suits may be followed in the trial of election petitions. It would appear therefore that in the absence of any prohibition contained in the law, the court has the power to summon a court witness if it thinks that the ends of justice require or that the case before it needs that kind of evidence. It must be remembered that an election petition is not an action at law or a suit in equity. It is a special proceeding. The law even requires that an election petitioner should not be allowed to withdraw an election petition which he had once made and that the election petition may be continued by another person, so long as another person is available. The policy of election law seem to be that for the establishment of purity of elections, investigation into all allegations of mal practises including corrupt practices at elections should be thoroughly investigated. Here was a case where a large number of cars were used presumably for the purpose of carrying voters to the booth. ”

70. After having drawn attention to above citation, it is argued that since Form 17C has not been prepared by the Returning Officer nor copy of the same has been provided to the polling agents, which was mandatory as per Rule 49S of the Rules. The court is also well within its power to direct summoning of the same i.e. Form No. 17C.
71. From the side of the learned counsel for the respondent, submission is made that number of votes polled are tallied with the number of votes counted. It is not the case of the election petitioner that there was any difference of votes polled and counted. If there is no difference in the number of votes polled and counted, then the election will not be taken to have been materially affected. Next, he has argued that neither the petitioner has annexed copy of Form 17C relating to the election nor has she made any averments that she had applied for the same under Rule 93 of the Rules or under Right to Information Act and that the same was denied to her. Next, he has argued that the petitioner has not alleged any discrepancy in part-I or part-II of the Form 17C and in absence of such allegation it cannot be said that election had been materially affected. The petitioner has not alleged any discrepancy in Form 17-C and Form 20 in relation to Election. He has not set up a case pleading that her polling agents gave different number of votes polled and the counting of votes showed different number of votes. There was no pleading/averments that the petitioner had appointed polling agents in the said election. She has also not pleaded as to who was the Presiding Officer or polling agent at the polling booths. She has also not arrayed the Returning Officer as respondent nor any Presiding Officer as respondent in the election petition. It is not a case of the petitioner that Form 17-C was not prepared. Her allegation is that Presiding Officer did not give true copy of the counting of votes to the polling agent of the petitioner, which is a vague allegation. There is no complaint made by anyone to any of the officials that Form 17-C was not given to the polling agent of the petitioner. There is also no pleading with regard to Rule 49T(3), 49U(2) and 57C(1) which have been cited by him in the written arguments. The said rules are reproduced herein below :

"Rule 49-T (3).- The polling agents present at the polling station, who desire to affix their seals, shall also be permitted to do so."

"Rule 49 U(2)- (2) Each packet shall be sealed with the seal of the presiding officer and with the seal either of the candidate or of his election agent or of his polling agent who may be present at the polling station and may desire to affix his seal thereon."

72. Rule 57C(1) has already been reproduced above, hence the same is not being quoted again.
73. It is further argued that in terms of provisions of Section 101, 102 and 103 of the Indian Evidence Act, burden of proof lies on the election petitioner. It must firstly be shown that there had been non-compliance with provisions of Constitution or of the Act or any Rules or orders made thereunder. It must further be shown that as a consequence thereof, the result of election had been materially affected. The two conditions are cumulative and both must be established and burden of establishing the same is upon the petitioner which has not been discharged. It is further argued that there is no pleading made by the petitioner that Rule 49S is mandatory, therefore, any evidence in that regard would not be admissible as the same was not pleaded. It has been laid down in **Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri and another, AIR 2011 SCC 760**, that the grounds set-up in the pleading for setting aside the election must be proved beyond reasonable doubt. No presumption or any inference of fact can be raised that the result of the election of the returned candidate must have been materially

affected and the fact that such infraction had materially affected result of the election, must be proved by adducing cogent and reliable evidence. He has relied upon paragraph no. 14 which is quoted herein below:-

14. It may be mentioned that here in this case non-compliance with the provisions of the Representation of People Act, 1951 and the Election Rules of 1961 was by the officers, who were in-charge of the conduct of the election and not by the elected candidate. It is true that if clause (iv) is read in isolation, then one may be tempted to come to the conclusion that any noncompliance with the provisions of the Constitution or of the Act of 1951 or any Rules of 1961 Rules or orders made under the Act would render the election of the returned candidate void, but one cannot forget the important fact that clause (d) begins with a rider, namely, that the result of the election, insofar as it concerns a returned candidate, must have been materially affected. This means that if it is not proved to the satisfaction of the Court that the result of the election insofar as it concerns a returned candidate has been materially affected, the election of the returned candidate would not be liable to be declared void notwithstanding non-compliance with the provisions of the Constitution or of the Act or of any Rules of 1961 Rules or orders made thereunder. It is well to remember that this Court has laid down in several reported decisions that the election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons. The success of a winning candidate at an election cannot be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of someone else. That is why the scheme of Section 100 of the Act, especially clause (d) of sub-Section (1) thereof clearly prescribes that in spite of the availability of grounds contemplated by subclauses (i) to (iv) of clause (d), the election of a returned candidate shall not be voided unless and until it is proved that the result of the election insofar as it concerns a returned candidate is materially affected. The volume of opinion expressed in judicial pronouncements, preponderates in favour of the view that the burden of proving that the votes not cast would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate lies upon one who objects to the validity of the election. Therefore, the standard of proof to be adopted, while judging the question whether the result of the election insofar as it concerns a returned candidate is materially affected, would be proof beyond reasonable doubt or beyond pale of doubt and not the test of proof as suggested by the learned counsel for the appellant. This part of the case depends upon the ruling of this Court in Vashisht Narain Sharma Vs. Dev Chandra (1955) 1 SCR 509 : AIR 1954 SC 513. In that case, there was a difference of 111 votes between the returned candidate and the candidate who had secured the next higher number of votes. One candidate by name of Dudh Nath Singh was found not competent to stand election and the question arose whether the votes wasted on Dudh Nath Singh, if they had been polled in favour of remaining candidates, would have materially affected the fate of the election. Certain principles were stated as to how the probable effect upon the election of the successful candidate, of votes which were wasted (in this case effect of votes not cast) must be worked out. Two witnesses were brought to depose that if Dudh Nath Singh had not been a candidate for whom no voting had to be done, the voters would have voted for the next successful candidate. Ghulam Hasan, J. did not accept this kind of evidence. It is observed as follows: -

"It is impossible to accept the ipse dixit of witnesses coming for one side or the other to say that all or some of the votes would have gone to one or the other on some supposed or imaginary ground. The question is one of fact and has to be proved by positive evidence. If the petitioner is unable to adduce evidence in a case such as the present, the only inescapable conclusion to which the Tribunal can come is that the burden is not discharged and the election must stand."

While interpreting the words "the result of the election has been materially affected" occurring in Section 100(1)(c), this Court in the said case notified that these words have been the subject of much controversy before the Election Tribunals and the opinions expressed were not uniform or consistent. While putting the controversy at rest, it was observed as under: -

"These words seem to us to indicate that the result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate." In another para in the said decision it is observed: -

"It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognized that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1) (c) and hold without evidence that the duty has been discharged."

74. It is further argued that for the petitioner to succeed in the election petition, under Section 100(1)(d)(iv) of the Act, he has to establish that the result of the election in so far as it concerns, the returned candidate had been materially affected by non compliance of any of the provisions of Constitution or of the Act or any Rules and order made thereunder. Indeed there has been no non-compliance of the above provisions but the evidence led by the appellant at the stage of the trial of the petition falls absolutely short of establishing that the result of the election in so far as returned candidate is concerned, had been materially affected. Regarding this he has relied upon the law laid down in **Uma Ballav Rath Vs. Maheshwar Mohanty and others, AIR 1999 SC 1322**, Paragraph no. 6 of which is quoted herein below:-

"6. The above finding, however, does not end the matter. For the appellant to succeed in the election petition, under Section 100(1) (d) (iv) of the Act, he had to establish that the result of the election, in so far as it concerns the returned candidate, had been materially affected by non-compliance with any of the provisions of the Constitution or of the Act or of any rules or orders made under the Act. Indeed, there has been non-compliance with the provisions of the Constitution, and of the Act, and the rules and orders made under the Act but the evidence led by the appellant at the trial of the election petition falls absolutely short of establishing that the result of the election in so far as it concerns the returned candidate had been materially affected thereby. The evidence on the record does not show that the result of the election had been materially affected by allotment of symbol "Wheel" to respondent No.1. The appellant, failed to establish, the allegation that the result of the election had been materially effected in so far as the returned candidate is concerned by action of the Election Commission and the Returning Officer. The learned single Judge found that the statements of the witnesses were vague, general and conjectural in nature and did not establish the charge made by the appellant. We have been taken through the evidence of the witnesses by learned counsel for the parties and we are not persuaded to take a different view than the one taken by the High Court either. To avoid an election, it is necessary that cogent evidence is led in support of the charge. An election cannot be set aside on "presumptions", surmises or conjectures. Clear and cogent proof in support of the allegations is essential. In the instant case, the evidence led by the appellant runs hopelessly short of establishing the charge under Section 100(1)(d)(iv) of the Act. In this view of the matter, the finding recorded by the learned single Judge of the High Court on Issue No.1 against the appellant cannot be found fault with. We, therefore, do not find any merit in this appeal. The appeal consequently fails and is hereby dismissed but without any order as to costs."

75. He has further relied upon **Kashi Nath (dead) through L.Rs. Vs. Jaganath, 2003 (8) SCC page 740**, wherein it is laid down that where evidence is not in line with the pleadings and is at variance with it, such evidence cannot be looked into or relied upon.
76. Further he has relied upon **Gajanan Krishnaji Bapat and another Vs. Dattaji Raghobaji Meghe and others, AIR 1995 SCW 3407** which is on the same point that the court cannot consider any fact which is beyond pleadings of the parties. It is further argued that it is well settled that in absence of the pleadings, the evidence, if any, produced by the parties cannot be considered. It is also a settled law that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the parties in support of their case. The object and purpose of pleading is to enable the adversary party to know the case, it has to meet. In such a case, it is the duty of the court to ascertain the substance of the pleadings to determine the disputed question involved. It is not open to the tribunals to fly off at a tangent disregarding the pleadings, to reach any conclusion that they think, are just and proper.
77. After having heard both the sides this Court is of the view that on this issue, the main thrust is being laid by the petitioner on the noncompliance of Rule 49S of the Rules 1961, which provides that Presiding Officer at the close of the poll shall prepare an account of votes recorded in the form 17-C and enclose it in a separate cover with the words "accounts of votes recorded" subscribed thereon and that Presiding Officer shall furnish to every polling agent present at the close of the polling, a true copy of the entries made in Form 17-C after obtaining a receipt from the said polling agent and shall attest it as a true copy. The said provision in Sub-clause (2) has clearly used the expression "shall furnish" and having laid stress on this, it is vehemently argued that there was no option before the Presiding Officer not to give polling agent a copy of Form 17-C and because of the same not having been done, it shall also be presumed that the same was not prepared at all and hence the entire election process stands vitiated.
78. From the side of respondent no. 1, it is being vehemently argued that there is no pleading made in the petition to the effect that Form 17C was never prepared and that copy of the same was also not given to the polling agent as provided under Rule 49S, hence the entire election process should stand vitiated.
79. I do find substance in the argument made by the learned counsel for the respondent no. 1 that this fact ought to have been pleaded by the learned counsel for the petitioner that Form 17C was never prepared because it is apparent that declaration of result would not be possible without preparation of Form 17C, because only after comparison has been made between Form 17C and Form 20, when the figure of votes are found similar then only the result is declared. Moreover, both the parties have repeatedly drawn attention of this Court to the contents of Form 17C which includes detailed information with respect to the polling such as total number of electors assigned to the polling station; total number of votes entered in register for voters (Form-17A); number of voters deciding not to record votes under Rule 49O; number of voters not allowed to vote under Rule 49-M etc. It further includes information with respect to the test votes recorded under Rule 49MA(d) required to be deducted and below the column 10 of this, there is also a provision that polling agents would put their signatures after the entire information is filled up in this form and part-II of this form includes result of the counting and that too has to include names of the candidate/election agents/counting agents and it has to be signed by counting supervisor with full signature. This form was never filled up, has nowhere been mentioned by the learned counsel for the petitioner nor has it been stated by any of the polling agents that he had not put any signature on any such form provided to them. First of all, it was required to be pleaded in great detail from the side of the petitioner that this form was never filled up by the Presiding Officer nor its copy was given on being demanded and also if the same was not filled up and when demanded, copy of it was not given, whether any compliant with regard to its non-preparation was made to the Returning

Officer or the District Election Officer or Higher Authority, the same has also not been clarified but only this much has been pleaded in the plaint that a copy of the 17-C which contains votes cast and other details, had not been provided to the polling agents of the petitioner. It is also argued by the learned counsel for the respondent that it was bounden duty of the petitioner to obtain copy of this Form-17-C from the Election Officer under Rule 93 of the Rule of 1961 which provides as under:-

“93. Production and inspection of election papers.— (1) While in the custody of the district election officer or, as the case may be, the Returning officer—

(a) the packets of unused ballot papers with counterfoils attached thereto;

(b) the packets of used ballot papers whether valid, tendered or rejected;

(c) the packets of the counterfoils of used ballot papers;

(d) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of section 152; and

2[(dd) the packets containing registers of voters in form 17-A;]

(e) the packets of the declarations by electors and the attestation of their signatures; shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court.

2[1A) The control units sealed under the provisions of rule 57C and kept in the custody of the district election officer shall not be opened and shall not be inspected by, or produced before, any person or authority except under the orders of a competent court.]

(2) Subject to such conditions and to the payment of such fee as the Election Commission may direct, —

(a) all other papers relating to the election shall be open to public inspection; and

(b) copies thereof shall on application be furnished.

(3) copies of the returns by the Returning officer forwarded under rule 64, or as the case may be, under clause(b) of sub-rule (1) of rule 84 shall be furnished by the Returning officer, district election officer, chief electoral officer or the Election Commission on payment of a fee of two rupees for each copy.]”

For the sake of convenience, Rule 94 of the Act is as follows:-

“94. Disposal of election papers.—Subject to any direction to the contrary given by the Election Commission or by a competent court or tribunal—

1[(a) the packets of unused ballot papers shall be retained for a period of six months and shall thereafter be destroyed in such manner as the Election Commission may direct;]

2[(aa) the voting machines kept in the custody of the district election officer under sub-rule (1A) of rule 92 shall be retained intact for such period as the Election Commission may direct and shall not be used at any subsequent election without the previous approval of the Election Commission;]

(b) the other packets referred to in sub-rule (1) of rule 93 shall be retained for a period of one year and shall thereafter be destroyed:

3[Provided that packets containing the counterfoils of used ballot papers shall not be destroyed except with the previous approval of the Election Commission;]

(c) all other papers relating to the election shall be retained for such period as the Election Commission may direct.

94A. Form of affidavit to be filed with election petition.—The affidavit referred to in the proviso to subsection (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25.]”

80. He has also drawn attention to the Provisions of Rule 94 of Rules of 1961 and it was argued that it is evident from the above rules that petitioner could have obtained a copy under the above mentioned Rule 93. There is no pleading in the petition to the effect that petitioner had tried to obtain copy of the Form 17C from the District Election Officer and the same was denied, nor has there been extended any evidence to that effect and the burden to prove that Form 17C was never prepared lay upon the petitioner to prove this case to the hilt because in an election petition, burden is on the petitioner, who seeks relief of getting the elected candidate's election quashed/set aside, to strictly prove the ground taken, then only relief could be granted which is apparent from the legal position cited in various rulings above.
81. During argument, this point had also come to be raised from the side of petitioner that the court if now desires, may call for the document/Form 17C from the Election Office to which, learned counsel for the respondent no. 1 has drawn attention to Rule 94 of the Rule of 1961 which says that only certain type of papers mentioned therein pertaining to the election are retained for specific period which are mentioned in the above Rule. As regards voting machine, the same shall be kept in custody of District Election Officer under Sub Rule 1(A) of Rule 92 for a period as the Election Commissioner may direct. The packets referred in Rule 93(1) may be retained only for one year and thereafter would be destroyed and in view of these provisions, it was argued that since there was no court order for retaining the said record pertaining to this election, the maximum period for which the record could have been retained, was one year which has already expired, hence even if court would make any attempt to seek any document, it would be futile exercise.
82. The said argument is rebutted by the learned counsel for the petitioner saying that the document which have been mentioned in subclauses a to c of Rule 94 as well as in 93 sub-clause (1), they do not include Form 17C because he has read out each and every document which were mentioned therein, therefore, it was stated by him that the court if requires, can summon the said document i.e. Form No. 17-C.
83. In the alternative, learned counsel for the respondent no. 1 has further argued that even if the court is found to be well within its power to summon the said document, it would serve no purpose because the burden lies upon the petitioner to prove its case to the hilt and for that petitioner had to first plead in its pleading that the Form 17C was never prepared and that its copy was not provided to the polling agent when the same was demanded and since no such pleading has been made, therefore, the evidence in that regard that the Form 17C was never prepared, cannot be allowed to be led and hence, if this evidence cannot be led from the side of the petitioner, there is no question to summon the said document for court's perusal.
84. I find substance in the argument made from the side of respondent no. 1 and I find that the pleadings are very much clear and they do not contain any fact to the effect that Form 17C was never prepared and that polling agents who were appointed, had not put their signatures on the said form after counting and, therefore now there is no point in summoning the said document.
85. Learned counsel for the respondent no. 1 has further relied upon **Mangani Lal Mandal vs. Bishnu Deo Bhandari, AIR 2012 SC 1094**. Paragraph no. 9 of the said judgment is quoted herein below:-

"9. A reading of the above provision with Section 83 of the 1951 Act leaves no

manner of doubt that where a returned candidate is alleged to be guilty of noncompliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder and his election is sought to be declared void on such ground, it is essential for the election petitioner to aver by pleading material facts that the result of the election insofar as it concerned the returned candidate has been materially affected by such breach or nonobservance. If the election petition goes to trial then the election petitioner has also to prove the charge of breach or non-compliance as well as establish that the result of the election has been materially affected. It is only on the basis of such pleading and proof that the Court may be in a position to form opinion and record a finding that breach or non-compliance of the provisions of the Constitution or the 1951 Act or any rules or orders made thereunder has materially affected the result of the election before the election of the returned candidate could be declared void. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d) (iv). The sine qua non for declaring election of a returned candidate to be void on the ground under clause (iv) of Section 100 (1)(d) is further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance of the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void under Section 100 (1)(d)(iv). For the election petitioner to succeed on such ground viz., Section 100 (1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in (1) Jabar Singh Vs. Genda Lal; (2) L.R. Shivaramagowda and Others Vs. T.M. Chandrashekhar (dead) by LRs. and Others. and (3) Uma Ballav Rath (Smt.) Vs. Maheshwar Mohanty (Smt) and others."

86. After having drawn attention to this, he has vehemently argued that in the present case in the light of above position of law, the petitioner was required to not only prove that there was non-compliance of mandatory provisions of law but he was also required to prove that the said breach of compliance of the mandatory rule has materially affected the result of the election of the returned candidate, then only the election of the returned candidate could be declared to be void.
87. It is apparent from the pleadings as well as the evidence led from the side of the petitioner that though it has tried to prove unsuccessfully that copy of the Form 17C was never prepared and hence the same was not provided to the polling agents by the Presiding Officer but even if that be treated to be correct allegation, learned counsel for the petitioner has miserably failed in proving as to how the said non-providing of the copy of the Form 17C has resulted in materially affecting the election result of the returned candidate. It has also come on record that the margin of defeat is very huge as the returned candidate has won this election by securing 73325 votes while the petitioner has just secured 61455 votes and, therefore, it shows difference of more than 10,000 votes.
88. In above regard, respondent no. 1 has also placed reliance on **Akhtar Chooriwalla Vs. Smt. Pooja Pal, 2017 (2) ADJ 612**. Paragraph nos. 12, 14, 15, 16, 23 and 25 of the said judgment are as follows:-

"12. A plain and simple reading of the above provision reveals that where the High Court is of opinion that the result of the election, in so far as it concerns a returned candidate has been materially affected by non compliance of the provisions of the Constitution, Act, Rules or Orders made under the Act it shall declare the election of the returned candidate to be void. Thus, for getting the election of a returned candidate to be declared void, the petitioner has to plead and prove not only non compliance of the provisions of the Constitution, Act or any Rules or Orders made under the Act but also that the result of the election in so far as the returned candidate is concerned has been materially affected by such non compliance.

In view of the above provision two things have to be specifically pleaded and proved for succeeding in an election petition for getting the election of the returned candidate declared as void. The first is the non compliance with the provisions of the Constitution or of the Act or any Rules or Orders made under the Act and secondly that the result of the election of the returned candidate has been materially affected due to aforesaid non compliance.

14. Rule 2 of Order VI of the Code provides that the pleadings shall contain a statement in concise form of material facts on which party relies for his claim or defence as the case may be.

Section 83 of the Act specifically provides that an election petition shall contain a concise statement of "material facts" on which the petitioner relies.

15. A combined reading of Section 83 of the Act and Rule 2 of Order VI CPC makes it mandatory to state consciously by way of pleadings in the election petition, the "material facts" on which the petitioner relies upon in assailing the election of the returned candidate.

16. A complete reading of the pleadings of the election petition would reveal that the emphasis of the petitioner all through had been to state that he had actively pursued the authorities to supply him with the nomination Form in Urdu; he had made an application to this effect to the Returning Officer on 20.1.2012 a day prior to the commencement of the nomination; he had deposited a sum of Rs. 10,000/- in the State Bank of India on 23.1.2012 and had again approached the Returning Officer and the District Election Officer for supply of the nomination paper in Urdu; and he had approached them on 28.1.2012 which was last date for filing the nomination paper but he was not supplied with the same in breach of Rule 4 read with Rule 2 (1) (g) of the Conduct of Election Rules, 1961 & the Order of the Chief Election Commissioner U.P., dated 4.5.2001 and some other similar Orders which is sufficient under Section 100 (1) (d) (iv) of the Act for challenging the election of the returned candidate. However, there appears to be no averment or pleading that the breach of any Rule or Order has materially affected the result of the election of the returned candidate.

In order to prove that there is violation of the provisions of the Act, Rules and Orders issued under the Act, the petitioner has brought on record exhibit P-2, a letter dated 20.1.2012 addressed to the District Election Officer stating that under the Order of the Chief Election Officer U.P., dated 4.5.2001 he is entitled to nomination Form in Urdu and that he would be coming and asking for it for contesting election to the 261 Legislative Assembly Allahabad West. Exhibit P-3 is his letter dated 23.1.2012 addressed to the Returning Officer wherein he has stated that according to Rule 2 (1) (g) the word Form in respect of any election in a State includes a translation thereof in the languages used for official purposes of the State and he is entitled to the nomination Form in Urdu language. Exhibit P-4 is again a letter of the petitioner dated 24.1.2012 addressed to the District Election Officer informing that Urdu is the second official language of the State of U.P., and that the translation of the nomination Form in prescribed Form is supposed to be in Urdu language which is used for official purposes in the State. Since nomination Form is not available in Urdu, the date of submitting nomination be extended. The petitioner again submitted a representation to the same very effect to the Chief Election Officer U.P., and District Election Officer on 28.1.2012 which is Exhibit P-5."

23. In view of the above, non supply of nomination paper to the petitioner in Urdu for the purposes of election to the State Legislative Assembly attracts the provisions of Section 100 (1) (d) (iv) of the Act for setting aside the election of the returned candidate.

But before any decision to set aside the election of the returned candidate is taken, it is incumbent for me to deal with the second aspect of the matter ie., if the election of the returned candidate was materially affected due to non compliance of the above Circular Order.

25. In the entire election petition there is not a single averment that the result of the election was materially affected in any manner whatsoever by non compliance of the aforesaid Rules and Orders.

The petitioner was asked to point out any such pleadings if contained in the election petition but he could only point out to paragraphs 18, 19 and 20 which are reproduced herein below for the sake of convenience:-

18."That petitioner is filing present Election petition for challenging the 2012 U.P. Assembly Election of 261 Assembly Segment Allahabad West for non compliance of Rules/Regulations as laid down in Representation of People Act, 1950, Registration of electors Rules 1960, election Rules 1961 and numerous directions passed by Election Commission of India, exercising its power under Article 324 (1) of the Constitution of India by the officers and officials ie. District Election Officer, Dy. District Election Officer, Returning Officer of 261 Assembly Constituency of District Office, Allahabad because of their mala fide action the petitioner could not be nominated as valid nominated candidate due to the fact that the nomination paper in U.P., official language Urdu was not provided/given to the petitioner by the District Election Officer. Thus the present election Petition is being filed herewith as Election Petition on behalf of Elector as well as claimed to be candidate as per provisions of Section 79 of the Representation of People Act, 1951.

19.That as per provision of numerous Section of Representation of People Act, 1950 registration of People Act, 1950, Registration of Electors Rules 1960, Representation of People Act, 1951 and Conduct of Election Rules, 1961 the following malafide action was done by the offices and officials of District Election Office, Allahabad.

a. As per provision of Section 31 of Registration of People Act, 1951 and Rule 2 (1) (g) of Conduct of Election Rules, 1961, the Returning Officer concerned did not published put on notice board for public notice for 2012 Assembly election for 261 Assembly Constituency in Form 1 in Urdu Official Language, whereas same was done in English and Hindi Language. Such type of action is against Rule 2 (1) (g) of Conduct of Election Rules, 1961.

b. That as per provision of Section 33 of the Representation of People Act, 1951 and Rule 2 (1) (g) and 4 of Conduct of Election Rules, 1961 and direction of Chief Election Officer Uttar Pradesh dated 04.05.2001 the complete set of Nomination Forms should have been provided by the Returning Officer concerned in Urdu Official Language also. Whereas the Returning Officer provided complete set of nomination form in Hindi while incomplete set of nomination forms in Urdu was not provided.

c. That there was clear cut discrimination between both official Language of this State (Hindi and Urdu) which was malafide action done by Officers and Officials of District Election Officer, Allahabad. In this regard it is clarified by the petitioner that as per provision of rule 2 (1) (g) of Conduct of Election Rules, 1961 Secretary of the Election Commission of India has given an undertaking to this Hon'ble Court in writ petition no. 20847 of 1999 and 32992 of 2001 in the sense that an specific direction has been issued by Election Commission of India under its exclusive power under Article 324 (1) of the Constitution of India to Chief Electoral Officer, Uttar Pradesh for strict compliance of Rule 2 (1) (g) for future general election/bye election. Under afore mention direction of Election

Commission of India, the Chief Election Officer, U.P. Dr. Noor Mohammad issued two successive directions vide its letter dated 04.05.2001 and 08.11.2001 directing all District Election Officer of Uttar Pradesh for its strict compliance in future general election/bye election. Therefore, it is submitted that officers and officials of District Election Office concerned has flouted the aforementioned direction wilfully, deliberately and intentionally, the said conduct of aforementioned officers/officials are malafide in nature.

d. That as per provision of "U.P. Officials Language (Amendment) Act 1989" Section 3 have been inserted which says that "In the insert of Urdu Speaking People Urdu Language shall be used as Second Official Language for such purposes as may be notified by the Government from time to time. In this regard the State Government issued several government Orders dated 16.3.1999 and 06.10.2005 is being filed herewith and marked as Annexure No. 12 to this petition.

20. That the petitioner is challenging the Election of the Respondent who has been declared as a returned candidate from 261 Allahabad West Assembly Constituency on the ground of 100 (1) (d) (iv) of the Representation of People Act, 1951." In none of the above paragraphs, the petitioner has made any averment that the election of the returned candidate was materially affected by non compliance of the aforesaid Rules or Orders or by non supply of the nomination papers to him in Urdu."

89. As regards the burden of proof, the law which have been cited above is quite clear that initial burden would lie upon the petitioner to prove its case to the hilt just like a criminal case because it is not an ordinary proceedings as election proceedings are statutory proceedings and every ground has to be pleaded specifically in the plaint on the basis of which the relief is being sought to be claimed and it is apparent that learned counsel for the petitioner has ultimately reduced the controversies down to non supply of the Form 17C to the polling agents of the petitioner by the Presiding Officer which was mandatory provision, therefore, it was bounden duty of the petitioner's counsel to plead in the pleadings that the said Form 17C was never prepared by the Presiding Officer because of which copy of the same was not provided to the polling agent. Merely mentioning that copy of Form 17C was not given to the polling agent would not suffice to conclude that copy of the same was never prepared. Moreover, it is also apparent that the petitioner had full opportunity to obtain a copy of Form 17C from Election Office under Rule 93 of the 1961 which has not been done nor any evidence has been shown that any effort was made to obtain the same and his request was refused. The petitioner cannot be allowed liberty to shift this burden upon the respondent that he should have obtained a copy of Form 17C in order to defend that the returned candidate had won the election in accordance with the law and Rules. From the evidence which has been adduced from the side of the respondent no. 1, it is true that DW-1 has been evasive with respect to questions, which were asked, pertaining to Form 17C as she had answered that she cannot reply regarding these factual aspects unless she sees the record and it cannot be believed that she might not be knowing about the Form 17C but even if it be taken to be true that copy of Form 17C was not provided, the other condition which was required to be proved by the petitioner, is that the said breach of mandatory Rule actually materially affected the election of the respondent no. 1. Neither there appears to be any specific pleading on record in that regard nor clear evidence has come on record in this regard, therefore, it is apparent that only on the basis of

presumption, the violation of Section 66 and 64 and Rules 49S, 55C, 56C, 56D and 66-A cannot be held proved. This issue is decided accordingly against the petitioner.

Finding on Issue no. 4.

90. According to this issue, this Court has to decide whether election petition is not maintainable due to being bereft of material facts as state in paragraph no. 16 of the written statement.
91. Since this court has already rejected the application of th Respondent No.1 moved under Order VII Rule 11 C.P.C. vide order date 12.4.2019, this issue does not require any separate finding to be given an stands answered accordingly.

Finding on Issue No. 3:- This issue relates to relief.

92. After having given finding on all the three issues mentioned above this election petition deserves to be dismissed and is accordingly **dismissed**, with cost easy.

Order Date: 10-03-2021

(Sd.) DINESH KUMAR SINGH-I, J.

A. Mandhani, A.U./A.P. Pandey

By order,
DILIP K. VERMA,
Secretary,
Election Commission of India.

आज्ञा से,
अजय कुमार शुक्ला,
सचिव।



सरकारी गज़ट, उत्तर प्रदेश

उत्तर प्रदेश सरकार द्वारा प्रकाशित

प्रयागराज, शनिवार, १ मई, २०२१ ई० (बैशाख ११, १९४३ शक संवत्)

भाग ८

सरकारी कागज-पत्र, दबाई हुई रूई की गांठों का विवरण-पत्र, जन्म-मरण के आंकड़े, रोगग्रस्त होने वालों और मरने वालों के आंकड़े, फसल और ऋतु सम्बन्धी रिपोर्ट, बाजार-भाव, सूचना, विज्ञापन इत्यादि।

कार्यालय, नगर पंचायत फाजिलनगर, जनपद कुशीनगर

१२ फरवरी, २०२१ ई०

सं० २४/न०५०फा०/२०२०-२१-नगर पंचायत, फाजिलनगर, जनपद कुशीनगर द्वारा उत्तर प्रदेश नगरपालिका अधिनियम, १९१६ की धारा २९८ की सूची १ (ज) की उपधारा "ख" एवं "ग" के द्वारा प्रदत्त अधिकारों का प्रयोग करते हुए नगर पंचायत, फाजिलनगर सीमान्तर्गत वाहनों को विनियमित एवं नियन्त्रित करने के उद्देश्य से बस/टैक्सी/अन्य वाहन की पार्किंग शुल्क वसूली हेतु नियमावली, २०२१ तैयार कर प्रतिस्थापित की गयी है। जिसको प्रशासक नगर पंचायत, फाजिलनगर ने अपने आदेश दिनांक १२ फरवरी, २०२१ द्वारा स्वीकृति प्रदान की है, जिसे उक्त अधिनियम की धारा ३०१ के अन्तर्गत आम नागरिकों से सुझाव/शिकायत/संशोधन कराये जाने हेतु समाचार-पत्रों में प्रकाशित किया जाना अनिवार्य है। जिसके पश्चात् निर्धारित अवधि १५ दिन में कोई भी आपत्ति न आने के उपरान्त उपविधि प्रकाशन की तिथि से प्रभावी माना जायेगी।

बस/टैक्सी/अन्य वाहन/पार्किंग शुल्क नियमावली, २०२१

(क) **संक्षिप्त नाम**—यह नियमावली नगर पंचायत, फाजिलनगर, जनपद कुशीनगर के बस/टैक्सी/अन्य वाहन स्टैण्ड/पार्किंग शुल्क नियमावली, २०२१ कहलायेगी।

(ख) **प्रसार**—इस नियमावली का प्रसार नगर पंचायत, फाजिलनगर की सम्पूर्ण सीमा (समय-समय पर शासन द्वारा संशोधित) में होगी।

(ग) **परिभाषाएँ**—(१) नगर पंचायत फाजिलनगर का तात्पर्य नगर पंचायत फाजिलनगर, जनपद कुशीनगर से है।

(२) प्रशासक का तात्पर्य नगर पंचायत फाजिलनगर के प्रशासक से है।

(३) अधिशासी अधिकारी का तात्पर्य नगर पंचायत, फाजिलनगर में कार्यरत अधिशासी अधिकारी से है।

(४) नगरपालिका अधिनियम, १९१६ का तात्पर्य उत्तर प्रदेश, नगरपालिका अधिनियम, १९१६ तथा उसमें समय-समय पर संशोधित अधिनियम से है।

(५) कर्मचारी का तात्पर्य नगर पंचायत फाजिलनगर में नियुक्त स्थायी/अस्थायी/दैनिक/संविदा/आउट सोर्सिंग रूप से नियुक्त/कार्यरत कर्मचारी से है।

(६) ठेकेदार का तात्पर्य नगर पंचायत फाजिलनगर द्वारा इस नियमावली के अन्तर्गत पार्किंग शुल्क वसूल किये जाने वाले अधिकृत ठेकेदार से है।

(घ) **प्रभाव**—यह नियमावली शासकीय गजट में प्रकाशन होने की तिथि से प्रभावी होगी।

उपनियम

1-नगर पंचायत, फाजिलनगर सीमान्तर्गत कोई भी वाहन (शासकीय वाहनों अथवा नीजी प्रयोग हेतु सवारी वाहनों को छोड़कर) सवारी चढ़ायेगा/उतारेगा उसे नगर पंचायत फाजिलनगर द्वारा निर्धारित दर पर पार्किंग शुल्क का भुगतान देकर रसीद प्राप्त करना होगा।

2-कोई भी सवारी वाहन नगर पंचायत, फाजिलनगर द्वारा निर्धारित स्टैण्ड स्थल/स्थान पर ही खड़ा कर सवारी भरेगा या उतारेगा। निर्धारित स्टैण्ड स्थल/स्थान का विवरण निम्न है-

- (1) समउर मोड़-संस्कार सेन्ट्रल एकेडमी के पास तिराहे पर।
- (2) बाढू तिराहा-बड़ी नहर के पास एन0एच0 28 के दक्षिण।
- (3) बघउच रोड-ब्लाक रोड के पास।
- (4) कसया-गोरखपुर रोड-बघउच मोड़ एन0एच0 28 के पास।
- (5) तुर्कपट्टी रोड-गड़हिया मोड़ के पास।
- (6) तमकुहीराज रोड-पुलिस चौकी के पास।

3-नगर पंचायत फाजिलनगर सीमान्तर्गत किसी व्यक्ति/समूह द्वारा किराये पर चलने वाले सवारी गाड़ियों के लिए कोई अलग से स्थल नहीं बनाया जायेगा।

4-पार्किंग शुल्क अदा कर के रसीद लेने का दायित्व सम्बन्धित वाहन चालक/परिचालक/वाहन स्वामी की होगी।

5-नगर पंचायत, फाजिलनगर के अधिशासी अधिकारी तथा जिले के प्रशासनिक अधिकारियों के जाँच के समय वाहन के चालक/परिचालक/मालिक द्वारा रसीद प्रस्तुत की जायेगी। उचित रसीद न प्रस्तुत किये जाने पर तत्काल बीस गुना अर्थदण्ड वसूल किया जायेगा।

6-यदि पार्किंग शुल्क की वसूली ठेके पर है, तो नगर पंचायत के अधिशासी अधिकारी द्वारा जाँच के समक्ष ठेकेदार/अधिकृत कर्मचारी द्वारा रसीदों की जांच करानी होगी।

7-नगर पंचायत कर्मचारियों द्वारा वसूली की स्थिति में कार्यालय द्वारा जारी रसीदों पर ही वसूली करनी होगी, एवं प्रतिदिन की वसूली कार्यालय में जमा करनी होगी।

8-नगर पंचायत द्वारा निर्धारित स्टैण्ड/पार्किंग स्थल पर पेय जल, सफाई, प्रकाश एवं अन्य यात्री सुविधायें उपलब्ध कराया जायेगा, किन्तु किसी समय आंशिक असुविधा के कारण वसूली प्रभावित नहीं होगी।

9-नगर पंचायत फाजिलनगर द्वारा निषिद्ध क्षेत्र (नो इंट्री) घोषित किये जाने वाले स्थानों पर निर्धारित समय/क्षेत्र में किसी वाहन का प्रयोग पूर्णतया वर्जित होगा।

10-अभियोजित सवारी गाड़ियों के ऊपर अभियोग चलाने/चलान करने का अधिकार प्रशासक/अधिशासी अधिकारी नगर पंचायत फाजिलनगर को होगा।

11-वसूली/दरों में किसी विवाद उत्पन्न होने की दशा में नियमावली के अधीन प्रशासक/अधिशासी अधिकारी नगर पंचायत फाजिलनगर द्वारा कार्यवाही की जायेगी।

स्टैण्ड/पार्किंग शुल्क की सूची

1-प्राइवेट बस/ट्रक	रु0 100.00 प्रतिदिन
2-मिनी बस/मिनी ट्रक/डी0सी0एम	रु0 75.00 प्रतिदिन
3-जीप/टैक्सी/पिकअप/ट्रेक्टर ट्राली व्यवसायिक प्रयोग वाले	रु0 50.00 प्रतिदिन
4-टैम्पो/ई-रिक्शा/टाटा मैजिक	रु0 35.00 प्रतिदिन

दण्ड

नगर पंचायत फाजिलनगर बस/टैक्सी/अन्य वाहन स्टैण्ड/पार्किंग शुल्क नियमावली, 2021 के किसी धारा या भाग की अवहेलना किये जाने पर उ0प्र0 नगरपालिका अधिनियम, 1916 के अन्तर्गत दण्डात्मक कार्यवाही की जायेगी।

ह0 (अस्पष्ट),
प्रशासक/उपजिलाधिकारी,
नगर पंचायत, फाजिलनगर,
जनपद कुशीनगर।

कार्यालय, नगर पंचायत, फाजिलनगर जनपद कुशीनगर

23 फरवरी, 2021 ई0

सं0 25/न0पं0फा0/2020-21—उत्तर प्रदेश नगरपालिका अधिनियम, 1916 (उ0प्र0 अधिनियम संख्या 2, सन् 1916) की धारा 298 तथा उसके साथ अंकित सूची 1 के अधीन शक्ति का प्रयोग करके नगर पंचायत फाजिलनगर, जनपद कुशीनगर अपने सीमान्तर्गत विविधकर/शुल्क नियमावली, 2021 बनायी है। जिसे उक्त अधिनियम की धारा 301 के अन्तर्गत आपत्तियाँ एवं सुझाव आमंत्रित करने हेतु प्रकाशित किया जाता है। उक्त नियमावली के सम्बन्ध में किसी व्यक्ति या समूह का कोई आपत्ति या सुझाव हो तो अधिशासी अधिकारी/प्रशासक, नगर पंचायत, फाजिलनगर, जनपद कुशीनगर को संबोधित करके लिखित रूप से प्रेषित किया जाना अनिवार्य है। निर्धारित अवधि 15 दिन में कोई भी आपत्ति न आने के उपरान्त निम्नवत् उपविधि प्रकाशन की तिथि से प्रभावी मानी जायेगी।

नियमावली

(क) **संक्षिप्त नाम**—यह नियमावली नगर पंचायत, फाजिलनगर, जनपद कुशीनगर के विविधकर/शुल्क नियमावली, 2021 कहलायेगी।

(ख) **प्रसार**—इस नियमावली का प्रसार नगर पंचायत फाजिलनगर की सम्पूर्ण सीमा (समय-समय पर शासन द्वारा संशोधित) में होगी।

(ग) **परिभाषाएँ**—(1) नगर पंचायत फाजिलनगर का तात्पर्य नगर पंचायत, फाजिलनगर, जनपद कुशीनगर से है।

(2) प्रशासक का तात्पर्य नगर पंचायत फाजिलनगर के प्रशासक से है।

(3) अधिशासी अधिकारी का तात्पर्य नगर पंचायत फाजिलनगर में कार्यरत अधिशासी अधिकारी से है।

(4) नगरपालिका अधिनियम, 1916 का तात्पर्य उत्तर प्रदेश नगरपालिका अधिनियम, 1916 तथा उसमें समय-समय पर संशोधित अधिनियम से है।

(5) कर्मचारी का तात्पर्य नगर पंचायत फाजिलनगर में नियुक्त स्थायी/अस्थायी/दैनिक/संविदा/आउट सोर्सिंग रूप से नियुक्त/कार्यरत कर्मचारी से है।

(6) ठेकेदार का तात्पर्य नगर पंचायत फाजिलनगर द्वारा इस नियमावली के अन्तर्गत विविधकर/शुल्क वसूल किये जाने वाले अधिकृत ठेकेदार से है।

(घ) **प्रभाव**—यह नियमावली शासकीय गजट में प्रकाशन होने की तिथि से प्रभावी होगी।

उपनियम

1—नाला/नाली/सार्वजनिक स्थल पर गन्दगी फैलाने पर जुर्माना शुल्क रु0 500.00 प्रति प्रकरण।

2—किसी स्वामी के मरे हुए बड़े जानवर उठाने पर रु0 1,000.00 प्रति पशु।

3—किसी स्वामी के मरे हुए छोटे जानवर उठाने पर रु0 500.00 प्रति पशु।

4—किसी व्यक्ति के शादी विवाह एवं अन्य उत्सव में सफाई हेतु शुल्क रु0 2,000.00 प्रति प्रकरण।

5—किसी स्थायी या अस्थायी दुकान/चाट/फल/मेमोज/चाउमिन/अण्डा/चाय/समोसा/पकौड़ी/भूजा/पान/सब्जी दुकान एवं ठेले आदि पर डस्टबिन न होने पर जुर्माना शुल्क रु0 200.00 प्रति दुकान।

6—गृह स्वामी के द्वारा अपने मकान के सामने रोड व नाली में कूड़ा डालने पर जुर्माना रु0 200.00 प्रति मकान पुनरावृत्ति करने पर रु0 500.00 प्रति मकान कूड़ा/कचरा जलाने पर जुर्माना रु0 1,000.00 एवं पुनरावृत्ति करने पर जुर्माना शुल्क रु0 2,000.00 प्रति मकान।

7—सड़क के किनारे मोरंग, बालू, गिट्टी, ईट भवन सामग्री (मलवा) पाये जाने, नालियों रिटेनिंग वाल के ऊपर अतिक्रमण, सड़क के किनारे अवैध गुमटी, खोखा, इत्यादि व सड़क के किनारे फुटपाथ पर दुकानों का सामान फैलाने, रात के समय या दिन में सड़क पर दो या चार पहिया वाहन खड़ा कर रास्ता अवरुद्ध करने, बीच सड़क में शादी-ब्याह या अन्य प्रयोजन कर रास्ता अवरुद्ध करने पर जुर्माना शुल्क रु0 500.00 प्रतिदिन।

8—डोर-टू-डोर कूड़ा कलेक्शन नगर पंचायत, फाजिलनगर जनपद कुशीनगर द्वारा करने पर प्रति मकान यूजर चार्ज के रूप में घरेलू शुल्क रु0 50.00 प्रति माह तथा व्यवसायिक शुल्क रु0 150.00 प्रतिमाह प्रति प्रतिष्ठान तथा गेस्ट हाउस, बैंक, शराब की दुकान नर्सिंग आदि बल्क वेस्ट जनरेटर रु0 500.00 प्रतिदिन एवं प्रति गेस्ट हाउस/प्रति बुकिंग।

9—नगर पंचायत, फाजिलनगर की सीमा में निर्मित होने वाले सार्वजनिक शौचालयों के मूत्रालयों का प्रयोग करने वाले प्रति व्यक्ति शुल्क रु0 2.00 एवं सार्वजनिक शौचालय का प्रयोग करने वाले प्रति व्यक्ति से यूजर चार्ज रु0 5.00 लिया जायेगा।

10—नगर पंचायत में स्थित नाला/नाली/सड़क/रिटेनिंग वाल अन्य सार्वजनिक सम्पत्ति पर अवैध कब्जा/अतिक्रमण पाये जाने पर जुर्माना शुल्क रु0 2,000.00 प्रति व्यक्ति, अवैध/अतिक्रमण कार्यालय, नगर पंचायत, फाजिलनगर के संज्ञान में आने पर कार्यालय द्वारा नोटिस प्राप्त करने या नोटिस लेने से इन्कार के दिनांक के एक दिन के बाद से अवैध कब्जा/अतिक्रमण हटाये जाने की तिथि तक प्रतिदिन जुर्माना रु0 100.00 के हिसाब से वसूल किया जायेगा।

11—नगर पंचायत फाजिलनगर सीमान्तर्गत खुले में शौच करते पाये जाने पर जुर्माना रु0 300.00 प्रति व्यक्ति तथा पुनरावृत्ति पाये जाने पर जुर्माना रु0 500.00 प्रति व्यक्ति।

12—नगर पंचायत फाजिलनगर जनपद कुशीनगर सीमान्तर्गत महापुरुषों की प्रतिमाओं, पार्क/डिवाइडर्स/फुटपाथों/नगर पंचायत के स्वामित्व के भवनों पर पोस्टर/बैनर लगाने/चिपकाने पर जुर्माना रु0 2,000.00 देय होगा।

13—नगर पंचायत, फाजिलनगर सीमान्तर्गत प्लास्टिक/थर्माकोल के गिलास,कप, प्लेट आदि में खाद्य का पेय चाय, काफी, शर्बत, कोल्डड्रिंक आदि समग्री के बिक्री पर जुर्माना रु0 500.00 प्रतिदिन एवं पुनरावृत्ति पर रु0 1,000.00 देय होगा, साथ ही साथ उपरोक्त सामग्री के विक्रय एवं भण्डारण करने वाले व्यक्ति के पकड़े जाने पर निम्नलिखित जुर्माना शुल्क देय होगा—

1—100 ग्राम तक	रु0 1,000.00।
2—101 ग्राम से 500 ग्राम तक	रु0 2,000.00।
3—501 ग्राम से 01 किग्रा तक	रु0 ,5000.00।
4—01 किग्रा से 05 किग्रा तक	रु0 10,000.00।
5—05 किग्रा से अधिक	रु0 25,000.00।

14—नगर पंचायत फाजिलनगर, जनपद कुशीनगर सीमान्तर्गत सार्वजनिक सड़कों, नाला, फुटपाथों, डिवाइडर्स आदि के तोड़ने क्षति करने पर जुर्माना रु0 3,000.00 प्रति मीटर।

15—नगर पंचायत पंचायत फाजिलनगर जनपद कुशीनगर सीमान्तर्गत सार्वजनिक स्थानों,नगर पंचायत के स्वामित्व के भवनों विद्युत पोलों, फुटपाथों डिवाइडर्स आदि पर प्रचार-प्रसार, प्रदर्शन आदि करने पर किसी भी साइज का पोस्टर लगाने जुर्माना रु0 200.00 प्रति पोस्टर, बास या लोहे का खम्भा गाड़कर होर्डिंग लगाने पर जुर्माना रु0 500.00 प्रति वर्ग मीटर होगा। विज्ञापन पोस्टर लगाने पर कार्यालय, नगर पंचायत फाजिलनगर से अनुमति प्राप्त करने पर रु0 50.00 प्रति पोस्टर एवं होर्डिंग लगाने पर रु0 300.00 प्रति वर्ग मीटर का दर लागू होगा। पोस्टर/होर्डिंग लगाने की अवधि कार्यालय की अनुमति के दिनांक से 3 माह तक के लिए प्रभावी होगा। उक्त नियम का प्रभाव सरकारी बैनरों, पोस्टरों पर लागू नहीं होगा।

16—नगर पंचायत, फाजिलनगर, जनपद कुशीनगर निर्मित विवाह घर, सार्वजनिक शौचालय, कार्यालय भवन, रैन बसेरा, पार्क, तालाबों आदि पर लगाये लाइटों, दरवाजों, पेड़ पौधों, स्ट्रीट लाइटों को क्षतिग्रस्त करने पर जुर्माना रु0 2,000.00 प्रति अदद किया जायेगा।

दण्ड

यदि कोई भी व्यक्ति उपविधि का उल्लंघन करेगा/करायेगा/करने में प्रोत्साहन देगा, उस व्यक्ति पर नगरपालिका अधिनियम, 1916 एवं ठोस अपशिष्ट प्रबंधन नियमावली के तहत कार्यवाही की जायेगी।

ह0 (अस्पष्ट),
प्रशासक,
नगर पंचायत, फाजिलनगर,
जनपद कुशीनगर।

सूचना

फर्म मे0 ए0के0 इण्टर प्राईजेज, पता सी-6 एफ न्यू आगरा, आगरा यू0पी0 पत्रावली संख्या एजी 13564 में दिनांक 17 अक्टूबर, 2020 को श्रीमती रूतिमा गुप्ता उक्त फर्म की साझेदारी से अपनी स्वेच्छा से पृथक् हुई तद्दिनांक को सन्तोष मेहरा फर्म की भागीदारी में सम्मिलित हुये दिनांक 05 जनवरी, 2021 को मनीष कुमार गुप्ता उक्त फर्म की साझेदारी से अपनी स्वेच्छा से पृथक् हुये तद्दिनांक को श्रीमती संगीता मेहरा फर्म की भागीदारी में सम्मिलित हुई, दिनांक 01 अप्रैल, 2021 को श्रीमती रीना गुप्ता उक्त फर्म की साझेदारी से अपनी स्वेच्छा से पृथक् हुई तद्दिनांक को अक्षत मेहरा फर्म की भागीदारी में सम्मिलित हुये दिनांक 17 अक्टूबर, 2020 को फर्म का पता परिवर्तित कर 11बी, हीराबाग दयाल बाग आगरा यू0पी0 कर लिया गया तथा वर्तमान में साझीदार श्री सन्तोष मेहरा, श्रीमती संगीता मेहरा, अक्षत मेहरा हैं।

सन्तोष मेहरा,
साझीदार,

मे0 ए0के0 इण्टरप्राईजेज,
पता-11बी, हीराबाग कालोनी,
दयालबाग आगरा (यू0पी0)।

सूचना

फर्म मे0 अग्रवाल आईस एण्ड कोल्ड स्टोरेज नन्दलाल पुर, हाथरस रोड, आगरा पत्रावली संख्या एजी 6670 में दिनांक 01 अप्रैल, 2021 को शिवांग अग्रवाल पुत्र श्री विजय कुमार अग्रवाल, निवासी जी-1, कमला नगर आगरा उक्त फर्म की भागीदारी में सम्मिलित हुये वर्तमान

में फर्म में साझीदार विजय कुमार अग्रवाल, श्रीमती चारु अग्रवाल, शिवांग अग्रवाल हैं।

विजय कुमार अग्रवाल,
साझीदार,

मे0 अग्रवाल आईस एण्ड कोल्ड स्टोरेज,
नन्दलालपुर, हाथरस रोड, आगरा।

सूचना

सर्वसाधारण को सूचित किया जाता है कि वास्ते फर्म मेसर्स नसीम अहमद कान्द्रेक्टर, ग्राम दारा सराय समधन, कन्नौज साझीदारी दिनांक 28 जून, 2014 को दिनांक 01 अप्रैल, 2021 से विघटित कर दी गयी है। नसीम अहमद, साझीदार मेसर्स नसीम अहमद कान्द्रेक्टर, ग्राम दारा सराय, समधन, कन्नौज।

नसीम अहमद।

सूचना

फर्म मे0 अल्फा इन्जीनियरिंग वर्क्स 20, इण्डस्ट्रियल एस्टेट नुनिहाई, आगरा पत्रावली संख्या एजी 6298 में दिनांक 26 मार्च, 2021 को श्री सतीश अग्रवाल पुत्र स्व0 पूरन चन्द अग्रवाल, निवासी 13ए, लोहिया नगर बल्केश्वर आगरा एवं श्री हर्ष अग्रवाल पुत्र श्री सतीश अग्रवाल, निवासी 13ए लोहिया नगर बल्केश्वर आगरा उक्त फर्म की साझेदारी में सम्मिलित कर लिया गया है। फर्म में वर्तमान में साझीदार मनीष बंसल, मुकेश कुमार अग्रवाल, सतीश अग्रवाल, हर्ष अग्रवाल हैं।

मनीष बंसल,
साझीदार,

मे0 अल्फा इन्जीनियरिंग वर्क्स,
20, इण्डस्ट्रियल एस्टेट,
नुनिहाई, आगरा।